(16,350.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 211.

SARAH A. OAKES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition filed	1	1
Amended petition	1	1
Traverse	6	4
Findings of fact	7	4
Conclusion of law	16	15
Opinion	16	15
Judgment	24	23
Application for and allowance of appeal	25	23
Clerk's certificate	26	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1898.

1 In the Court of Claims.

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

I.—*Petition.*

The original petition of Sarah A. Oakes, heir-at-law of Hugh Worthington, deceased, was filed December 1, 1892, and subsequently, to wit, on January 9, 1895, on motion of claimant and by leave of court, an amended petition was filed and is as follows:

Amended Petition. Filed January 9, 1895.

To the Hon. Chief Justice and judges of the Court of Claims:

The petition of Sarah A. Oakes respectfully represents that she is a citizen of the United States and a resident of the city of Metropolis, in the State of Illinois.

II.

Your petitioner further represents that she is the daughter and sole heir-at-law of the late Captain Hugh Worthington, deceased, late of the city of Metropolis, in the State of Illinois.

III.

2 That prior to the late war, to wit, on or about the 29th day of November, 1858, Capt. Hugh Worthington, your petitioner's father, purchased a three-fifths interest in the steamboat *Eastport*, a staunch vessel of 570$\frac{34}{95}$ tons burden, duly enrolled at the port of Paducah, Kentucky. Said vessel was built in the year 1852, and her length was 230 feet and her breadth 32 feet and her depth 8 feet; that she was fully equipped with boilers, engines, and all necessary appurtenances for a steam vessel of the first class for the New Orleans trade.

IV.

That after the purchase of said vessel she was plying between Nashville, Tenn., and New Orleans, La., and continued in that trade until the blockade of the Mississippi river by the insurgents in the spring of 1861.

V.

That for a few months after the outbreak of the war she plied between points on the Ohio river until the month of August, 1861, when she was tied up at Paducah, Kentucky, her home port, and there remained until about the last day of August, 1861.

VI.

That about the last day of August, 1861, the said vessel was taken, without the knowledge, consent, or procurement of the said owner,

Capt. Hugh Worthington, who was then and had ever since the year 1858 been a citizen and resident of the State of Illinois and had never been a resident of an insurrectionary State, by Capt. Elijah Wood, who had formerly been the captain of the said vessel, and run up the Tennessee river to a point near the mouth of the Sandy river.

3 VII.

That some time after said vessel was so taken up the said river, and prior to the month of February, 1862, she was captured and taken possession of by the insurgents, and work was begun upon her to convert her into a Confederate war vessel.

VIII.

That in the month of February, 1862, while work was in progress, and before its completion and before the said vessel had been used in any hostile demonstration against the United States, the said vessel was recaptured by the United States naval forces, on the Tennessee river near Cerro Gordo, Tenn., said capture having been made by the United States gunboat *Conestoga*, under command of Commodore Foote, U. S. Navy, and the immediate command of John A. Dahle, U. S. N.

IX.

That after her recapture by the United States she was immediately taken to Mound City, Illinois, where she was converted, by the United States, into an ironclad gunboat for service upon the western rivers, as part of the United States fleet, and about the first day of July, 1862, she went into commission as such warship with a full complement of officers and crew, and served as such in the various battles and engagements on the Mississippi river, under command of Commodore Porter, U. S. N., and the immediate command of Lieutenant Commander S. L. Phelps, until April 26, 1864, when she was blown up, while on the Red River expedition, near Grand Ecore, La.

4 X.

That Congress, by an act entitled "An act to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington for his interest in the steamer *Eastport*," approved July 28, 1892 (27 Stat. 230), conferred jurisdiction to hear and determine the just rights of your petitioner as heir-at-law of said Captain Hugh Worthington for his losses sustained by reason of the premises, and to render such judgment as shall be just.

XI.

Your petitioner further avers that her late father, Captain Hugh Worthington, was consistently loyal to the United States during the late war, and gave no aid or comfort to the late rebellion; that before and during the entire war he was a citizen of and resident of

the State of Illinois, and never during the war resided either temporarily or permanently in an insurrectionary State; that during the war he was an officer in the civil service of the United States, to wit, a deputy collector of customs, having been appointed to said office under the administration of President Lincoln.

XII.

Your petitioner further shows that the rental value of said vessel during the time she was engaged in the service of the United States was $200 per day, and the value of the vessel at the time of her recapture was reasonably worth $70,000, and your petitioner avers that she is justly entitled to recover against the United States the said sums under the provisions of the said act of Congress aforesaid.

5 *Prayer.*

The premises considered, your petitioner prays judgment against the United States for three-fifths of the value of the said vessel, to wit, ⅗ of $70,000, amounting to $42,000, and ⅗ of the rental, @ $200 per day, the time she was in actual service of the United States as a warship, to wit, from June 30, 1862, to April 26, 1864, 634 days, @ $120 per day, amounting to $76,080, amounting in the aggregate to one hundred and eighteen thousand and eighty dollars ($118,080.00), besides costs.

SARAH A. OAKES.

ROBERT W. McCARTNEY,
Attorney for Claimant.
JOHN C. FAY,
CHARLES M. SHELLEY,
Of Counsel.

STATE OF ILLINOIS, }
County of Massac, } ss:

Sarah A. Oakes, being duly sworn, says that she is the claimant in the foregoing petition, and she knows the contents thereof; that the matters therein set forth of her own knowledge are true, and those stated upon information and belief she believes to be true. Deponent further says that she has at all times borne true faith and allegiance to the United States, and gave no aid or comfort to the late rebellion, and that the sum claimed in the foregoing petition is just, exclusive of all set-offs or just grounds of defence.

SARAH A. OAKES.

Sworn and subscribed before me this 7th day of January, A. D. 1895.

[SEAL.] WILLIAM A. McBANE,
Notary Public.

6 II.—*Traverse. Filed April* 4, 1895.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney General.

7 III.—*Findings of Fact and Conclusion of Law.*

This case having been heard before the Court of Claims, the court on the evidence and after hearing the argument of counsel, makes the following

Findings of Fact.

I.

At the outbreak of the war of the rebellion the steamer *Eastport*, duly enrolled on the 29th November, 1858, at Paducah, Ky., of 570$\frac{34}{95}$ tons burthen, commanded by Capt. Elijah Wood, was plying between the ports of Nashville, Tenn., and New Orleans, La., engaged in the cotton trade.

II.

After the commencement of the war aforesaid the vessel under the command of said Captain Wood continued to ply between points on the Ohio river until May, 1861, when, in consequence of the blockade of the Mississippi river by the Federal forces at Cairo, Ill., she was tied up at Paducah, Ky., where she remained until August following. During the time the vessel was tied up at Paducah, Ky., she was repaired extensively, the work being done under the orders of the said Captain Wood and Hugh Worthington.

III.

About the last of August or early in September, 1861, when the armed forces of the United States were about to take possession of Paducah, Ky., and while the vessel was in the possession and under the control of Capt. Elijah Wood aforesaid, he took said vessel, with a small crew of men, without the knowledge or consent of Hugh Worthington, one of the owners, from Paducah, Ky., and ran her up the Tennessee river, within the lines of the Confederate forces, to

a place near the mouth of the Sandy river, a few miles above Fort Henry.

What disposition was made of the vessel by Captain Wood does not appear, though the Confederate Archives office show- as follows:

Under date of October 31, 1861, Gen. L. Polk, C. S. army, telegraphed from Columbus, Ky., to the Secretary of the Navy, C. S., that "the price of the steamer *Eastport* is $12,000;" and on the same date J. P. Benjamin, acting Secretary of War, C. S., telegraphed to Gen. L. Polk directions to "buy the str. *Eastport* if thought worth $12,000 demanded."

Under date Nov. 28, 1861, Gen. L. Polk, in a letter from Columbus, Ky., addressed to Gen. A. S. Johnston, C. S. A., stated that he bought the steamer *Eastport* by authority of the Secretary of the Navy.

8 Under date of January 5, 1862, Gen. L. Polk wrote to P. J. Benjamin, Secretary of War, C. S., as follows: "By virtue of the authority from the War Department of October 31, I bought the steamer *Eastport*, and she is now undergoing the necessary alterations to convert her into a a gunboat."

Under date of January 16, 1862, J. P. Benjamin, Secretary of War, C. S., wrote to Gen. L. Polk as follows: "I shall order the necessary funds forwarded at once for the *Eastport*."

Under date of February 2, 1863, General Polk in a statement to the C. S. Secretary of War of the disbursement of certain moneys, gives as one item, "Am't expended in purchase of steamer *Eastport* as per receipt of Maj. Peters, A. Q. M., $9,688.92."

No further information on the subject of the within inquiry has been found in said archives.

By authority of the Secretary of War:

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

Whether the sum of money stated therein was paid to Captain Wood does not appear, nor whether he ever rendered an account thereof to the other owners, though a few months after the vessel was so run up the Tennessee river he returned to Paducah, Ky., and resumed his residence there, and died about the close of the war.

IV.

Some time between September, 1861, and February 7, 1862, the vessel was in the possession of the Confederate forces, but whether by reason of capture or purchase from said Captain Wood does not appear, and prior to the latter date was taken by said forces to near Cerro Gordo, Tenn., and work was there commenced to transform her into a gunboat for use in the Confederate service.

V.

On February 7, 1862, and while said vessel was lying under the bank of the river and being converted into a gunboat, for use in the Confederate service as aforesaid, with the iron and other material

therefor on board, but before her completion and before she had been used, or was in condition for use in any hostile demonstration against the United States, she was captured from the enemy near Cerro Gordo landing on the Tennessee river, "by the naval forces on the western rivers, commanded by Commodore A. H. Foote, U. S. N.," then "under the control of the War Department," *i. e.*, by detachments of men in small boats from the gunboats *Tyler*, *Lexington*, and *Conestoga*, and taken to Mound City, Ill., on the Ohio river, where she arrived about February 26, following. At the time of said capture the vessel was dismantled, her upper works, cabin, pilot and wheel-house having been cut away. She had also been scuttled in three places, to prevent her capture by the United States forces, by reason of all which she was damaged about $10,000.

In the capture aforesaid the detachments of men boarded the vessel under fire from the enemy, but from what number of men or whether the firing was from the vessel or from the land does not appear.

At the time of the capture aforesaid A. H. Foote was a captain in the United States Navy, serving under the following commission:

9 Abraham Lincoln, President of the United States of America, to all who shall see these presents, Greeting:

Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Andrew H. Foote, I have nominated and, by and with the advice and consent of the Senate, do appoint him a captain in the navy from the 29th of June, 1861, in the service of the United States. He is therefore carefully and diligently to discharge the duties of a captain by doing and performing all manner of things thereunto belonging; and I do strictly charge and require all officers, seamen, and marines under his command to be obedient to his orders as a captain; and he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America, or his superior officer set over him, according to the rules and discipline of the navy. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and [L. S.] sixty-one, in the eighty-sixth year of the Independence of the United States.

ABRAHAM LINCOLN.

By command of the President of the United States of America.

GIDEON WELLES,
Secretary of the Navy.

Registered.
WM. P. MORAN.

And under the following order from the Secretary of the Navy:

NAVY DEPARTMENT, *August* 30, 1861.

SIR: You have been selected to take command of the naval operation upon the western waters now organizing under the direction of the War Department.

You will therefore proceed to St. Louis, Missouri, with all practicable despatch and place yourself in communication with Major General J. C. Fremont, U. S. Army, who commands the army of the West. You will co-operate fully and freely with him as to your movements.

Requisitions must be made upon the War Department through General Fremont, and whatever the army cannot furnish the navy will endeavor to supply, having due regard to its operations on the coast.

The western movement is of the greatest importance, and the department assigns you this duty having full confidence in your zeal, fidelity, and judgment.

I am, respectfully, GIDEON WELLES.

Captain Andrew H. Foote, U. S. Navy, Washington, D. C.

True copy from the records of the Bureau of Navigation, Navy Department, Apr. 3, 1895.

F. M. RAMSAY,
Chief of Bureau.

At the same time Lieutenant S. L. Phelps was in command of the naval squadron attacking Fort Henry he was also serving as lieutenant commanding the U. S. gunboat *Conestoga* under the following commission:

Franklin Pierce, President of the United States of America, to all who shall see these presents, Greeting:

Know ye that, reposing special trust and confidense in the patriotism, valor, fidelity, and abilities of Seth Ledyard Phelps, I have nominated and, by and with the advice and consent of the Senate, do appoint him a lieutenant in the navy from the 14 September, 1855, in the service of the United States. He is therefore carefully and diligently to discharge the duties of a lieutenant by doing and performing all manner of things thereunto belonging; and I do strictly charge and require all officers, seamen, and marines under his command to be obedient to his orders as a lieutenant; and he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America, or his superior officer set over him, according to the rules and discipline of the navy. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at Washington, this twenty-fourth day of

July, in the year of our Lord one thousand eight hundred
[L. S.] & fifty-six, and in the eighty-first year of the Independence of the United States.

FRANKLIN PIERCE.

By command of the President of the United States of America.
J. C. DOBBIN,
Secretary of the Navy.

Registered. No. 29. The lowest number of same date takes rank.

L. B. HARDIN.

11 And also under the following order of the Secretary of the Navy:

NAVY DEPARTMENT, *June* 19, 1861.

SIR: You are hereby detached from special duty at Washington, D. C., and you will proceed to Cincinnati, Ohio, and on your arrival report to Commander John Rodgers for special duty under his command.

You will transfer to Lieutenant James M. Gillis the work of the Chili astronomical expedition.

I am, respectfully, GIDEON WELLES.

Lieutenant S. L. Phelps, U. S. Navy, Washington, D. C.

Immediately after the capture of the vessel aforesaid Flag Officer Foote reported his operations, together with the report of Lieutenant Phelps, to the Secretary of the Navy; which reports were communicated to Congress. Report Secretary of the Navy, with appendix containing reports from officers, December, 1862, pp. 460, 461, *et seq.*

At the time of the capture of said vessel no land forces were near the scene of capture and none took any active part therein.

VI.

After the vessel was brought to Mound City, Ill., she was converted into a gunboat by the United States, on the recommendation of Commodore Foote, and thereafter, about August, 1862, went into commission as such with a full complement of men and
12 officers of the United States Navy, and was so used on the Mississippi river as a part of the Mississippi squadron. This vessel, with others in like service, was turned over by the War Department to the Navy Department on the 1st October, 1862, pursuant to the act of Congress of July 16, 1862 (12 Stat. L., 587).

Prior to October 1, 1862, vessels in the United States Navy, including the gunboats *Tyler*, *Lexington*, and *Conestoga*, performing service on the western waters, were under the control of the War Department.

The vessel so captured continued in active service as a gunboat until April 17, 1864, when she was sunk by being run on a torpedo,

and afterwards, April 26, 1864, was blown up by her commander near Grand Ecore, La., to prevent her capture by the Confederates.

VII.

At the time the vessel was run up the Tennessee river, as set forth in finding III, she was a staunch vessel, about 10 years old, well equipped with machinery, in good condition, of the reasonable value of $40,000, and when captured by the United States forces, as set forth in finding V, the vessel in her then condition was reasonably worth $30,000.

VIII.

During the time the vessel was in the use and employment of the United States as hereinbefore found, the fair and reasonable rental or annual charter of the same for commercial use, without crew or propulsion, less the cost and time of putting her in repair, was $150 per day, that being the usual price per day paid by the quartermaster department for like vessels during that period.

IX.

In July, 1862, certain proceedings were had in the United States district court for the southern district of Illinois concerning the capture of the vessel as follows:

Record U. S. District Court, Southern District Illinois.

In the District Court of the United States for the Southern District of Illinois.

THE UNITED STATES } *vs.* STEAMBOAT EASTPORT. } In Admiralty.

Be it remembered that heretofore, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, came Lawrence Weldon, Esq., attorney of the United States for the southern district of Illinois, and filed in the office of the clerk of the district court of the United States for said southern district of Illinois a libel against the above-named steamboat, which said libel was and is in the words and figures following, to wit:

Libel.

UNITED STATES OF AMERICA, *Southern District of Ills.* }

District Court.

To the Hon. S. H. Treat, judge of said district:

L. Weldon, district att'y of said district, would represent that on or about the 20th day of June, A. D. 1862, in the Miss. river near Columbus, Ky., there was seized by Geo. D. Wise, captain and ass't

qrm., with gunboat flotilla (and which he hereby reports for condemnation) the steamer *Eastport*, and which was brought into said district. Said seizure was made for the reason that said
13 steamer was used by and with the knowledge and consent of the owner in aiding the present rebellion against the United States, contrary to the act of Aug. 6, 1861. The said att'y therefore asks that process of attachment may issue against said steamer, and the monition of this hon. court, and that all persons having an interest in the same may be made parties herein, and that on a final hearing of this case your honor will adjudge and decree condemnation of said boat and order that the same may be sold.

L. WELDON.

(Indorsed:) Filed July 17, 1862. S. A. Corneau, cl'k.

Whereupon a monition was issued out of the office of the clerk of said court as prayed in said libel; which said monition, the marshal's return thereto, together with certificate of publication, are in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to the marshal of the southern district of Illinois, Greeting:

Whereas a libel has been filed in the district court of the United States, in and for the southern district of Illinois, on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, by L. Weldon, district attorney of the United States, and Geo. D. Wise, capt. and ass't qrm. gunboat flotilla, against the steamer *Eastport*, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have, any right, title, or interest therein, may be cited to appear and answer, all and singular, the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of the damages alleged in said libel, besides costs of suit. You are therefore commanded to attach the said steamer *Eastport*, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give notice, by publication in the Illinois State Register, for fourteen days previous to the day of trial, and by netice posted up in the most public manner for the space of fourteen days at or near the place of trial of such seizure and libel, to all persons claiming the said steamer *Eastport*, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel, and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district, on the first Monday in September next, if that be a

day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Samuel H. Treat, judge of said court, this 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of our Independence the 87th year.

[L. S.] S. A. CORNEAU, *Clerk.*

Marshal's Return.

I hereby certify that on this 31st day of July, A. D. 1862, I have by virtue of this writ attached the within-named boat, and made proclamation of the same.

D. L. PHILLIPS, *U. S. M.*,
By ISAAC KEYES, *Deputy.*

Notice of Libel and Seizure.

UNITED STATES OF AMERICA, }
Southern District of Illinois, } ss:

Whereas, on the seventeenth day of July, A. D. 1862, Lawrence Weldon, United States district attorney, and Geo. D. Wise, capt. and ass't qrm. gunboat flotilla, filed a libel in the district court of the United States for the southern district of Illinois, against the steamer *Eastport*, boats, tackle, apparel, and furniture, in a cause of condemnation and forfeiture;

Whereas, by virtue of process in due form of law to me directed, returnable on the first Monday in September next, I have seized upon and taken the said steamer *Eastport*, boats, tackle, apparel, and furniture, and have the same in my custody:

Notice is hereby given that a district court of the United States will be held at the United States court-room, in the city of
14 Springfield, on the 1st Monday in September next, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS,
U. S. Marshal.

Springfield, Ill., Aug. 4, 1862.

Publisher's Certificate.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, does hereby certify that the annexed notice was published in said paper for fourteen days successively; the first publication thereof having been made on the 4th

day of August, A. D. 1862, and the last on the 19th day of August, A. D. 1862.

C. H. LANPHIER,
Publisher Illinois State Register.

And afterwards, to wit, on Tuesday, the 2d day of September, in the year last aforesaid, the following proceedings were had in said court in said case, and were entered of record, to wit:

THE UNITED STATES
against
THE STEAMER EASTPORT, &c. } In Admiralty.

The marshal having returned on the monition issued in this cause that he had attached the said steamer, her engines, boats, tackle, apparel, and furniture, and had given due notice to all persons claiming the same that the court would on this day proceed to the trial and condemnation thereof should no claim be interposed therefor:

This day came the libelants, by their advocate, L. Weldon, Esq., and upon their motion proclamation was made for all persons interested in the said steamer, her engines, boats, tackle, apparel, and furniture, to appear and interpose their claim therefor, and no person appearing to answer said motion, it is ordered, adjudged, and decreed by the court that the default of all persons be, and the same are, accordingly hereby entered, and that the allegations of the libel in this cause be taken as true against said property, and that the same be condemned as forfeited to the United States. It is further ordered, adjudged, and decreed by the court that the said steamer, her engines, boats, tackle, apparel, and furniture, be sold by the marshal under and by virtue of a writ of *venditioni exponas*, to be issued by the clerk of this court in accordance with the rules and practice of this court, and that upon the return thereof the marshal pay the proceeds of such sale into the depository of the court.

And afterward, to wit, on the 3rd day of December, in the year last aforesaid, the following further proceedings were had in said court in said cause, and were entered of record, to wit:

UNITED STATES on the Relation of GEORGE D. WISE
as Informer
vs.
STEAMER EASTPORT, &c. } In Admiralty.

And now came again The United States by their district attorney, and the marshal having reported to the court that the United States became the purchaser of the steamer *Eastport*, her engines, boats, tackle, apparel, and furniture, for the sum of ten thousand dollars. And the court, being now sufficiently advised in the premises, doth order, adjudge, and decree that there be allowed to the clerk for his services herein the sum of twelve dollars and eighty cents; to the marshal for his services herein the sum of one hundred and seventy-

one dollars and eighty-two cents, and to the district attorney for his services herein the sum of one hundred dollars (the court allowing the district attorney eighty dollars under the provisions of section 3 of the act of March 25th, 1862, entitled "An act to facilitate judicial proceedings in adjudications upon captured property, and for the better administration of the law of prize").

And it is further ordered, adjudged, and decreed by the court that the balance of the proceeds, amounting to the sum of nine thousand seven hundred and fifteen dollars and thirty-eight cents, be equally divided between the United States and George D. Wise, the informer herein.

15 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to the marshal of the southern district of Illinois, Greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, by the United States against the steamer *Eastport*, &c., praying that the same may be condemned and sold for the causes in said libel alleged; and

Whereas the said steamer *Eastport*, &c., has been attached by process issued out of the said district court in pursuance of the said libel and is now in custody by virtue thereof; and such proceedings have been thereupon had that by the final sentence and decree of the said court in this cause made and pronounced on the 2nd day of September, in the year of our Lord one thousand eight hundred and sixty-two, the said steamer *Eastport*, her boats, tackle, apparel, and furniture, was condemned and ordered to be sold by you, the said marshal, after giving 25 days' notice of such sale, according to law:

Therefore you, the said marshal, are hereby commanded to cause said steamer *Eastport*, her boats, tackle, apparel, and furniture, so condemned and ordered to be sold, to be sold in manner and form upon the notice and at the time and place by law required. And that you have the money arising from such sale in said court at Springfield on the 1st Monday of October, eighteen hundred and sixty-two, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness the Honorable Samuel H. Treat, judge of the said court, this 4th day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of our Independence the 87th year.

[L. S.] S. A. CORNEAU, *Clerk.*

L. Weldon, Esq., proctor.

By virtue of this writ I have on this 4th day of October, 1862, at public auction, sold the within-named steamer *Eastport*, her engines,

tackle, boats, apparel, and furniture to the United States for the sum of ten thousand dollars.

D. L. PHILLIPS,
U. S. Marshal.

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

I, M. B. Converse, clerk of the district court of the United States for the southern district of Illinois, do hereby certify the foregoing to be a true copy of the record and proceedings in a certain cause determined in said court wherein The United States on the relation of George D. Wise as informer, was libelant against The Steamer *Eastport*, as fully as the same now appear of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office in Springfield, this 6th day of June, A. D. 1894.

[SEAL.] M. B. CONVERSE, *Clerk.*

Of these proceedings Hugh Worthington had no notice or knowledge until after the sale of the vessel, and until late in the year 1862, but whether or not the other owners of the vessel or Captain Wood had does not appear. Nor does it appear why the other owners of said vessel are not seeking pay for the value of their interest in said vessel.

X.

At the time said vessel was run up the Tennessee river by her captain, as set forth in finding III, she was owned by Hugh Worthington, Mrs. A. O. Woolfolk, and Charles W. Harrison, in the proportion of three-fifths to Hugh Worthington, and one-fifth each to Mrs. A. O. Woolfolk and Charles W. Harrison.

What has become of the interest of the said Mrs. A. O. Woolfolk and Charles W. Harrison in said vessel, or where they are, does not appear. Nor does it appear whether they received any portion of the money so paid by the Confederate government.

16 XI.

Prior to and during the war Hugh Worthington was a citizen and resident of Metropolis, Massac county, Ill., about 10 miles above Paducah, Ky. He was loyal to the United States throughout the war and gave no aid or comfort to the rebellion.

XII.

Hugh Worthington died intestate at Metropolis, Ill., March 31, 1876, never having received from the United States any compensation for the use or value of the vessel so captured. He owned no property at the time of his death. What debts, if any, exist against his estate does not appear.

XIII.

The claimant, Sarah A. Oakes, is the sole surviving heir-at-law and the next of kin of said Hugh Worthington, deceased, being his daughter.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover and the petition is dismissed.

IV.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

This action is prosecuted under the *act of July* 28, 1892 (27 Stat. L., 320), which reads as follows:

Whereas it is claimed the steamer *Eastport* was taken by the United States anno Domini eighteen hundred and sixty-two, and converted into a gunboat; and

Whereas it is claimed at the time of such taking, one Hugh Worthington, then of Metropolis, Massac county, Illinois, but since deceased, was the owner of three-fifths interest in said steamer, and no compensation has been paid to said Hugh Worthington or his heirs; and

Whereas his daughter, Mrs. Sarah A. Oakes, of Metropolis, Illinois, claims that Hugh Worthington was a loyal citizen, that she is his only heir-at-law, and is justly entitled to receive from the United States compensation for the value of her father's interest in said steamer: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, and that from any judgment so entered by said Court of Claims, either party may appeal to the Supreme Court of the United States for compensation for the value of said Worthington's interest in said steamer *Eastport*. That upon proper petition being presented by said Sarah A. Oakes, her heirs, executors, or administrators to said court, said court is authorized and directed to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due.

SEC. 2. That in case judgment shall be rendered against the United States, the Secretary of the Treasury shall be, and he is hereby, authorized and directed to pay the claimant, her heirs, executors, or administrators whatever sum shall be adjudged by the court to be due out of any money in the Treasury not otherwise appropriated.

The facts briefly stated are these:

Early in the late civil war the captain of the steamer *Eastport*, plying on the Mississippi and other western rivers, without the

consent or knowledge of the owners, took the vessel from Paducah, the port of her enrollment, to a place on the Tennessee river
17 within the lines of the Confederate forces. What disposition, if any, was made of the vessel by Captain Wood does not appear, but it does appear that soon thereafter the Confederate government purchased the vessel of some one, as set forth in the findings, and that thereafter the vessel was found in the possession of the Confederate forces at Cerro Gordo, on the Tennessee river, undergoing transformation into a gunboat for use in the Confederate service.

While the work was thus in progress, but before the vessel had been used in any hostile demonstration against the United States, the naval forces of the United States, under the command of Commodore Foote, captured the vessel and took her to Mound City, Ill., where she was reconstructed and made a gunboat, and thereafter used as such by the United States until sunk and blown up by her commander in April, 1864, to prevent her capture by the enemy.

The naval forces thus capturing the vessel were at the time under the control of the War Department.

Soon after the capture certain libel proceedings were had against the vessel in the district court of the United States for the southern district of Illinois, pursuant to the *confiscation act August* 6, 1861 (12 Stat. L., 319), wherein a decree in condemnation forfeiting the vessel to the United States was rendered and the vessel ordered sold at public auction, which was accordingly done by the marshal of the district and the vessel bid in, in the name of the United States, for $10,000, as set forth in the findings.

Of these proceedings Hugh Worthington, one of the owners, had no notice until after the sale and late in 1862.

The act conferring jurisdiction on the court it will be observed, at first reading, is not free from ambiguity.

By the first clause of section 1 jurisdiction is conferred on the court "to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, * * * for compensation for the value of said Worthington's interest in said steamer *Eastport*."

In other words the act confers jurisdiction on the court to hear and determine in the first instance what the "just rights in law" of Hugh Worthington were at the time of capture or when the vessel was bid in by the United States and taken into the naval service of the Government.

There is no controversy about the claimant being the sole surviving heir of Hugh Worthington, deceased, so that her legal rights, whatever they may be, will depend upon the "just rights in law" of Hugh Worthington, through whom as such heir she claims and from whom her rights emanate.

This being determined in her favor, the second clause of the same section authorizes and directs the court, upon proper petition being presented, "to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court

shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due."

The justice of the claim must be measured by the law of the case, *i. e.*, "the just rights in law" of Hugh Worthington "for compensation for the value of said Worthington's interest in said steamer *Eastport*."

18 The act referred to is a remedial statute, and while, as in the case of the *United States v. Cummings* (130 U. S., 452), it would operate to remove the bar of any statute of limitations that might exist, no rights are conferred by the act, other than remedial, that did not exist before; and this is true whether the claimant or her ancestor, at any time prior to the passage of the act, could have maintained an action in this or any other court.

But the claimant contends that rights, other than remedial, are conferred by the special act, and in support of this contention several authorities are cited, the first of which is the *Fendall case* (16 C. Cls. R., 106). The action in that case was brought under an act of Congress giving this court "original legal and equitable jurisdiction of all claims now existing against the District of Columbia arising out of contract."

That was a general statute for a particular class of claimants, and is otherwise unlike the act in the case at bar; for in addition to the equitable jurisdiction thereby conferred, the cause of action must arise out of contract to entitle a claimant to sue. Jurisdiction was conferred upon the court to inquire into "*claims now existing against the District of Columbia arising out of contract*," thus showing that the right of recovery was based on pre-existing claims which arose out of contract.

In the *Boudinot case* (18 C. Cls. R., 716, 728) a special act was passed to enable an Indian, who claimed protection by reason of a treaty, "to bring suit in the Court of Claims against the United States Government to recover what may be due him in justice and equity for the loss inflicted upon him by reason of said seizure for an alleged violation of the internal-revenue laws of his property, a tabacco factory, its detention and damages thereto while under seizure, the value of the tobacco, material, and other personal property also seized, and the expenses to which he was subjected thereby."

That was a case in which no rights existed prior to the passage of the act. The act created a claim arising out of an alleged tort, after the act of the internal-revenue officers had been sustained by a decree of a United States district court, affirmed by the Supreme Court; and it authorized the claimant to recover, not what was legally due him, but "to recover what may be due him *in justice and equity for the loss inflicted upon him*" by the seizure, notwithstanding the legality of the seizure had been sustained by the courts.

So that there is no parallel between that case and the one at bar, for in the case at bar rights did exist, subject to the character of the recapture of the vessel and the legality of the condemnation proceedings, both of which the court is authorized to judicially inquire into,

to ascertain the "just rights in law" of the claimant and her ancestor.

In the *Carroll case* (22 C. Cls. R., 104–107) a special act of Congress conferred jurisdiction on the court to enable the persons therein stated to maintain an action against the District of Columbia "to recover such damages, if any, as they have sustained by reason of the change of grade and the regrading of the streets around square numbered seven hundred and thirty-six in the city of Washington, * * * and in ascertaining the damages sustained by the plaintiffs the court is directed to take into consideration the advantages, if any, to the said square numbered seven hundred and thirty-six resulting from the change of grade and regrading aforesaid."

19 The court in construing this act said:

The doctrine is indisputable that a municipal corporation is not liable to adjoining property-owners in damages for consequences incident to an improvement of the street so long as there is no encroachment upon the possession of the owner and the corporation is guilty of no negligence; but Congress in the passage of the act of our jurisdiction have waived that defense on the part of the District of Columbia, and referred to this court the question of the extent of the injury, if any, suffered by the claimants in the improvement of the streets of the city of Washington as the owner of block No. 736, known as Dudington square.

A cursory reading of the act will convince any one that by it certain rights were conferred on the claimants, *i. e.*, "to recover such damages, if any, as they have sustained by reason of the change of grade and the regrading of the streets," etc., thereby conferring rights that did not exist before; and in addition to this the court was directed in the ascertainment of the damages sustained, "to take into consideration the advantages, if any, to the said square numbered seven hundred and thirty-six resulting from the change of grade and regrading aforesaid."

The act not only conferred jurisdiction on the court to enable persons to maintain their actions, but it took away an important defense and substituted in its stead a right of recovery for such damages as they may have sustained resulting from the change of grade and regrading as therein stated.

In the case at bar there is no contention that any defense is taken away from the defendants by the act.

In the case of the *United States v. Alexander* (148 U. S., 186) the question did not arise. That was an action by the owner of a well which became dry by reason of the construction of an aqueduct to increase the water supply in the city of Washington. The first section of the act provided, among other things, in substance that a survey and map should be made of the lands necessary to extend the aqueduct and the mode of acquiring title to such lands by condemnation, and then the section provided that "any person or corporation having any estate or interest in any of the lands embraced in said survey and map, who * * * shall be *directly injured* in any property right, may, at any time within one year from the

publication of notice by the Attorney General, as above provided, file a petition in the Court of Claims of the United States, setting forth his right or title and the amount claimed by him as damages for the property taken or injury sustained."

The question presented in that case was as to whether the act restricted "the right to sue exclusively to the parties holding land within the limits of the survey."

The court held that "the plain meaning and intent of the legislature were to provide for the care of those whose lands or property rights were directly injured by the construction of the work proposed to be done, as well as for the care of those injured by the taking of their lands."

So the destruction of the well was held to be a "direct injury" to property recognized as such by law, and that inasmuch as the injury resulted from "the construction of a public work under authority of a statute" there could be a recovery both on principle and authority.

The foregoing are the authorities cited by the claimant in support of the proposition that the act under which suit is brought is not only remedial, but fixes the rights of the claimant, or gives her rights additional to those she had theretofore, *i. e.*, that the act merely devolves upon the court the duty of ascertaining the facts, and then, without reference to the legal rights of the parties at the time of the capture or sale of the vessel, to proceed to assess the damages, thereby constituting the court a jury shorn of judicial discretion.

Congress doubtless have the power to create a claim or cause of action, at least as against the United States and by the same act to provide a remedy for its enforcement, but they have not done so, in our opinion, in the remedial act under consideration.

By the act, jurisdiction is conferred on the court to hear and determine "the just rights in law" of the claimant, not simply as to her heirship, but in addition the "just rights in law" of Hugh Worthington, deceased, "for the value of said Worthington's interest in said steamer *Eastport*."

It is indeed true that a subsequent clause of the first section directs the court to inquire into the merits of the claim, and if it "shall find that said claim is just," it is directed to enter judgment "for whatever sum shall be found to be due."

But this is plainly governed by the preceding or jurisdictional clause, "that full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights *in law*" of the claimant as heir of the original owner; and when the statute subsequently says that the court shall enter judgment if it be found "that said claim is just," it means *just* "*in law*" as previously prescribed. The rights to be determined are legal rights.

With these preliminary remarks concerning the proper construction to be given to the act we will proceed to consider what "the just rights in law" of Hugh Worthington were "for compensation for the value of said Worthington's interest in said steamer *Eastport*."

The claimant's contention is that the vessel was captured by the

Confederate forces, but before she had been used or was in condition to use in any hostile demonstration against the United States she was recaptured by the naval forces of the United States; and that inasmuch as the claimant was a loyal citizen of the United States, residing at the time in a loyal State (Illinois), the title as between him and the United States was not divested by reason of such recapture; and that the condemnation proceedings in the district court of the United States for the southern district of Illinois under the *confiscation act August* 6, 1861 (12 Stat. L., 319), and the sale of the vessel under the decree of the court thereunder, were void for the want of an order of the President to seize and condemn the vessel, as held in the case of the *United States v. Winchester* (99 U. S., 372), and that the whole proceedings are, therefore, reviewable collaterally in this proceeding.

For these reasons, and to sustain a recovery, the claimant invokes the doctrine of the *jus postliminii* of the Roman law, which she contends was recognized in the *act March* 3, 1800, section 1 (2 Stat. L., 17), the first section of which is as follows:

That when any vessel other than a vessel of war or privateer, or when any goods which shall hereafter be taken as prize by any vessel, acting under authority from the Government of the United States, shall appear to have before belonged to any person or persons, resident within or under the protection of the United States, and to have been taken by an enemy of the United States, or
21 under authority, or pretence of authority, from any prince, government, or State, against which the United States have authorized, or shall authorize, defence or reprisals, such vessels or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying for and in lieu of salvage, if retaken by a public vessel of the United States, one-eighth part, and if retaken by a private vessel of the United States, one-sixth part of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration thereof, shall be adjudged to pay for and in lieu of salvage one moiety of the true value of such vessel of war or privateer.

The *act June* 30, 1864, section 29 (13 Stat. L., 314), now Revised Statutes, section 4652, incorporated the essential provisions of the act 1800, repealing, however, the specific rate of salvage therein fixed and providing that the sum to be paid as salvage cost and expenses should be fixed by the court in the event of a judgment of restitution.

The defendants' contention is, assuming that the vessel was captured by the Confederate forces, that her recapture by the naval forces of the United States, while under the control of the War Department, was a recapture by the Army of the United States, and

that by reason thereof the claimant's title was thereby divested and became vested in the United States.

And the defendants further contend that the proceedings in the district court, as before stated, were in conformity to law, and that if the title did not become vested in the United States by reason of the capture aforesaid, then the same did vest by reason of the sale had under the decree of condemnation.

The question for our consideration at this point, then, assuming, as the claimant contends, that the vessel was captured by the Confederate forces, is as to the character of the recapture by the naval forces of the United States on inland waters while under the control of the War Department.

The question is one by no means free from embarrassment, and, as far as we have been able to investigate, we have found no adjudicated case directly in point, and none has been cited by counsel on either side.

It is well settled and not questioned in this case that if the vessel in controversy was captured by the army the title thereto passed as soon as the capture was complete; while if captured by the navy as prize the title would not pass until condemned as provided by law. (Halleck's International Law, ch. 30, secs. 1 and 2; the ship *Resolution*, 2 Dall., 1; the *Adventure*, 8 Cranch, 221; the *Sally Magee*, 3 Wall., 451; the *Peterhoff*, Blatchford R., 620; the *Neustra*, etc., 108 U. S., 92.)

It will not be necessary to consider the question of a joint capture by the army and navy, as the findings show that the recapture, if such it was, was by the officers and men of vessels in the navy under the control of the War Department, so that the army and the naval forces within the territory or district of the captured vessel were necessarily acting under the orders of the same military commander.

Therefore if the recapture is to be treated as a marine capture, by the naval forces of the United States, such capture was presumably by order of the military commander and not under direction of naval or admiralty authority.

It cannot therefore be claimed, under the circumstances of this case, that the capture was made by the naval forces as such
22 acting under naval authority, as evidently contemplated should be done in order to dignify the capture as a marine prize of war. (See *Case* 680 *Pieces Merchandise*, 2 Sprague, 233, 235.)

To sustain a recovery herein the vessel must have been "taken as prize" within the meaning of the *act of* 1800 (*supra*). That war existed at the time there is no controversy.

In the *Case* 269½ *Bales of Cotton* (1 Woolworth, 236–256) the court, by Mr. Justice Miller, in speaking of the capture of cotton on the 26th September, 1862, by vessels used as transports on the Mississippi river said: "From that statement it is not at all inferable that the vessels named were any part of the naval force of the United States. Indeed, we know that no naval force then existed on those waters. The gunboats were made a part of the navy by order of the Government on the 1st day of October, several days after the

capture." And further along at page 257 it is said: "In short, the entire statement is consistent with the fact that the vessels and crews were in the employment of the War Department, and were used merely as transports to carry the troops; and it is consistent with no other supposition."

Thus showing that in the mind at least of that great jurist, to constitute a maritime prize the capture must have been by the naval forces as such, acting under naval authority, and that inasmuch as the naval vessels on the western or inland waters of the United States were not made a part of the navy until October 1, 1862, no such capture could have occurred prior thereto.

The *act July* 16, 1862 (12 Stat. L., 587), under which the capturing and other vessels were transferred to the Navy Department, recited and provided "that the western gunboat fleet constructed by the War Department shall be transferred to the Navy Department, which shall be hereafter charged with the expense of its repair, support, and maintenance," thus showing that prior to the transfer the capturing vessels had been constructed by the War Department, and by reference to the *army appropriation act July* 17, 1861 (12 Stat. L., 263), we find that the sum of $1,000,000 was appropriated for "gunboats on the western waters." Of this all persons were bound to take notice.

The findings (5) show that the vessel was captured from the enemy by detachments of men from the gunboats *Tyler*, *Lexington*, and *Conestoga* while she was lying under the banks of the river being converted into a gunboat for use in the Confederate service.

It is evident therefore that the vessel at the time of capture was accessible to the land forces, and as was said in the *Cotton Plant case* (10 Wall., 577, 580), "there was nothing in the situation of the property that required peculiarly a naval force or marine service to effect its capture. The seizure might as well have been made by a detachment from the army as by one from the navy."

In this same connection the court in the case of *Porter v. United States* (106 U. S., 607, 612), in construing the words "inland waters," as used in the *act July* 2, 1864, section 7 (13 Stat. L., 377), said: "The term 'inland' as here used, was evidently intended to apply to all waters of the United States upon which a naval force could go, other than bays and harbors on the seacoast. In most instances property of the enemy on them could be taken, if at all, by
23 an armed force without the aid of vessels of war. These were seldom required on such waters, except when batteries or fortified places near them were to be attacked in conjunction with the army."

This authority, however, is not cited for the purpose of showing that no marine capture could have occurred on the inland waters of the United States at the time of the recapture of the vessel in the case at bar, but rather as showing the intention of Congress by the act, as thus construed, that captures of enemies' property on the inland waters could be effected, "if at all, by an armed force without the aid of vessels of war."

If the land forces had aided in the recapture, it is clear that they

would have done so under the order of the same military commander, as both forces were subject to his orders.

While the land forces did not contribute immediately to the recapture of the vessel, they were at the time stationed at or near the mouth of the Tennessee river.

At the same time it is quite evident from the facts of the case that the land forces could have captured the vessel without the cooperation of the naval forces, in which case it is conceded the title would have become vested in the United States.

So, in view of what we have said, and the reasoning of the authorities cited, we hold that the vessel was captured by the army, and that therefore the title of the claimant's intestate thereby became divested and vested in the United States.

This being the holding of the court, it is unnecessary to consider the question of the legality of the condemnation proceedings in the district court for the southern district of Illinois; or the other, perhaps more important, question as to whether the captured vessel, which was undergoing conversion into a gunboat for use in the Confederate service, would fall within the meaning of the *act of* 1800 (*supra*), "as a vessel or war" as set forth in the first clause of the section quoted.

In view of the conclusion we have reached in the case, it is unnecessary to consider what may be the "just rights in law" of the claimant in the estate as "heir," or the legal effect of the statute in that regard authorizing her to bring this suit.

For the reasons stated the claimant is not entitled to recover, and the petition is therefore dismissed.

Weldon and Davis, JJ., were not present when this case was tried and took no part in the decision.

24 V.—*Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 11th day of November, A. D. 1895, judgment was ordered to be *to be* entered as follows:

The court, upon due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Sarah A. Oakes, be dismissed.

BY THE COURT.

25 VI.—*Application for and Allowance of Appeal.*

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

From the judgment rendered in the above-entitled cause on the 11th day of November, 1895, in favor of the defendants, the claimant, by her attorney of record, Charles M. Shelley, on the 3d day of

February, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

C. M. SHELLEY,
Att'y for Claimant.
JOHN C. FAY, *Of Counsel.*

Filed February 3, 1896.
Allowed in open court June 8, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

26 In the Court of Claims.

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal of Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 22d day of June, 1896.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16,350. Court of Claims. Term No., 211. Sarah A. Oakes, appellant, *vs.* The United States. Filed August 1st, 1896.

No. Dec. 19.

Brief of Fay for Appellant

Office Supreme Court U
FILED.
FEB 4 1898
JAMES H. MCKENNEY
CLE

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1897.

Filed Feb. 4, 1898.

895
S. C.

SARAH A. OAKES

vs.

THE UNITED STATES.

No. 211.

BRIEF OF APPELLANT.

JOHN C. FAY,
Attorney for Appellant.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

SARAH A. OAKES,
APPELLANT,
v.
THE UNITED STATES.
No. 211.

BRIEF OF APPELLANT.

STATEMENT.

This is an appeal from a judgment of the Court of Claims dismissing the petition of appellant in an action prosecuted under the act of July 28, 1892 (27 Stat. L. 320), which reads as follows:

> "An Act to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington, for his interest in the steamer *Eastport*.
>
> Whereas it is claimed the steamer *Eastport* was taken by the United States anno Domini eighteen hundred and sixty-two, and converted into a gun-boat; and
>
> Whereas it is claimed at the time of such taking,

one Hugh Worthington, then of Metropolis, Massac County, Illinois, but since deceased, was the owner of three-fifths interest in said steamer, and no compensation has been paid to said Hugh Worthington or his heirs; and

Whereas his daughter, Mrs. Sarah A. Oakes, of Metropolis, Illinois, claims that Hugh Worthington was a loyal citizen, that she is his only heir-at-law, and is justly entitled to receive from the United States compensation for the value of her father's interest in said steamer: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, and that from any judgment so entered by said Court of Claims, either party may appeal to the Supreme Court of the United States for compensation for the value of said Worthington's interest in said steamer *Eastport*. That upon proper petition being presented by said Sarah A. Oakes, her heirs, executors, or administrators to said court, said court is authorized and directed to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due.

SEC. 2. That in case judgment shall be rendered against the United States, the Secretary of the Treasury shall be, and he is hereby, authorized and directed to pay the claimant, her heirs, executors, or administrators, whatever sum shall be adjudged by the court to be due, out of any money in the Treasury not otherwise appropriated."

At the outbreak of the civil war the steamer *Eastport*, of Paducah, Kentucky, engaged in trade on the Cumber-

land, Ohio, and Mississippi rivers, was the property of Hugh Worthington, Mrs. A. O. Woolfolk, and Charles W. Harrison, in the proportion of three-fifths to Worthington, and one-fifth each to the other two owners. Early in the war of the rebellion the captain of said steamer, without the consent or knowledge of the owners, took the vessel from Paducah, the port of her enrollment, to a place on the Tennessee river, within the lines of the Confederate forces, where she fell into the hands of the Confederate government, through means not disclosed by the record, which government proceeded to convert her into a gunboat at Cerro Gordo, on the Tennessee river, a few miles above Fort Henry. While the work was thus in progress, but before the vessel had been used in any hostile demomstration against the United States, "the naval forces on the Western waters, commanded by Commodore A. H. Foote, U. S. N.," captured the vessel and took her to Mound City, Illinois, where she was reconstructed and made a gunboat, and thereafter used as such by the United States until she was blown up and sunk by her commander, in April, 1864, near Grand Ecore, Louisiana, to prevent her capture by the enemy.

Soon after her capture certain libel proceedings were had against her in the District Court of the United States for the Southern District of Illinois, under the Confiscation Act of August 6, 1861 (12 Stat. L. 219), wherein a decree in condemnation forfeiting the vessel to the United States was rendered, and the vessel ordered sold at public auction, which was done by the marshal for said district, and the vessel bid in in the name of the United States. These proceedings were had without an order from the President, and without any notice to the said Hugh Worthington. Prior to and during the war Hugh Worthington was a citizen and resident of Metropolis,

Illinois, about ten miles above Paducah, Kentucky. He was loyal to the United States throughout the war, and gave no aid or comfort to the rebellion.

Scope of Enabling Act.

It was contended by the counsel for the Government, and the contention was sustained in the court below, that the enabling act in this case has no other effect on the jurisdiction of the Court of Claims than to remove the bar of the Statute of Limitations, and unless claimant had a cause of action at the time of the appropriation of his vessel by the United States to their use, none is given him by this act. The jurisdiction conferred upon the Court of Claims by this act is stated in two ways. At the beginning of the first section jurisdiction is conferred upon the court "to hear and determine what are the just rights in law of the said Sarah A. Oakes," etc., and at the end of the same section it is further conferred in this language: "If on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum is found to be due." In the Cummings case (130 U. S. R. 452) the claimants were "permitted to sue in the Court of Claims, which court shall pass upon the law and facts as to the liability of the United States," and the court below held that the jurisdiction conferred by the enabling act in this case was the same as that conferred by the act in the Cummings case. The Cummings case was a claim for damages resulting from the alleged wrongful acts of an officer of the United States—a collector of internal revenue—and this court held that unless his wrongful acts in themselves created a cause of action, none existed, as no cause of action was created by the

enabling act. I shall, however, attempt to show that the jurisdiction conferred in the case at bar is much broader and more liberal than a mere authority to "pass upon the law and facts as to the liability," etc. The language of the act conferring jurisdiction in the case at bar, as stated by Judge Peele in delivering the opinion of the court below, is not free from ambiguity. As I have shown above, it is attempted to be stated in two ways, in each of which, however, the jurisdiction depends upon whether or not the claim is "just." There is no better settled rule of law than that remedial statutes should be construed most liberally in favor of the persons to whom relief purports to be afforded and so as to render that relief effectual.

In Smith *against* Townsend (148 U. S. 490) this court says:

> "It is well settled that where the language of a statute is in any manner ambiguous or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times, and the defect or mischief which the statute was intended to remedy."

In Lyde *v.* Bernard (1 M. & W. 113), Parke, B., said:

> "I admit that words may be construed in a sense different from their ordinary one when the context requires it, or when the act is intended to remedy some existing mischief, and such a construction is required to render the remedy effectual. For we must always construe the act so as to suppress the mischief and advance the remedy."

In Heydenfelt *v.* Daney Gold Min. Co. (93 U. S. 634) Mr. Justice Miller, speaking for this court, says:

> "'It is better always,' says Judge Sharswood, 'to adhere to a plain common-sense interpretation of the

> words of a statute than to apply to them refined and technical rules of grammatical construction. Gyger's Estate, 65 Penn. St. 312. If a literal interpretation of any part of it would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act, taken as a whole, it should be rejected. There is no better way of discovering its true meaning, when expressions in it are rendered ambiguous by their connection with other clauses, than by considering the necessity for it and the causes which induced its enactment.' "

One of the guides in the construction of ambiguous statutes is the title thereof. In U. S. *v.* Fisher (2nd Cranch., 386) Chief Justice Marshal says:

> "Where the mind labors to discover the design of the legislature it seizes everything from which aid can be derived, and in such cases the title claims a degree of notice and will have its due share of consideration."

The title to the enabling act in this case is as follows:

> "An act to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington for his interest in the steamer *Eastport*."

This title, taken in connection with the authority to the court in the body of the act to enter judgment in favor of the claimant if they shall "find that said claim is just," and the duty of the court to give a liberal construction to a remedial statute seems to me to leave no doubt that the jurisdiction intended by the legislature to be conferred upon the court was to ascertain if the claimant was the heir at law of Hugh Worthington, if Hugh Worthington was a loyal citizen of the United States and the owner of three-

fifths of the steamer *Eastport*, if said steamer was taken and appropriated to the use of the United States, and the value thereof, and if the court will give to the word "just" in the act its ordinary, every-day interpretation rather than its technical interpretation in law, there will be no difficulty in arriving at this conclusion.

Land or Marine Capture.

Relying upon their contention that the enabling act in this case affected the jurisdiction of the court below in no other way than to remove the bar of the Statute of Limitations, the defendants contended, and the contention was sustained in the court below, that the steamer *Eastport* was captured by the land forces of the United States, and that by the mere act of capture the title became vested, by the law of war, in the captors; while it was contended by the claimant that the capture was a marine capture, and under the act of March 3, 1800 (2 Stat. L. 17), no title passed to the captors in the absence of a condemnation and sale in a court of admiralty. The facts found by the court below show that the capture was effected while the *Eastport* was tied up at Cerro Gordo Landing, on the Tennessee river, by the naval forces on the Western rivers commanded by Commodore A. H. Foote, U. S. N., *i. e.*, by detachments of men in small boats from the gunboats *Tyler*, *Lexington*, and *Conostoga*; that the naval forces on the Western waters were equipped partly with money appropriated by Congress to the Quartermaster's Department of the army, and partly by the Navy Department, but they were commanded by officers of the navy, who took their orders from and reported to the Navy Department (Finding V, page 8). These naval officers were not, as is stated in the opinion of the court below,

under the command of, or even a part of, the forces of the Army of the West. The letter of instructions under which Admiral Foote proceeded to take command of the Western flotilla is found in Finding V, page 7, in which he is ordered by the Secretary of the Navy to place himself

> "in communication with Major-General J. C. Fremont, U. S. army, who commands the Army of the West. You will co-operate fully and freely with him as to your movements. Requisitions must be made upon the War Department through General Fremont, and whatever the army cannot furnish the navy will endeavor to supply. The Western movement is of the greatest importance, and the Department assigns you to this duty, having full confidence in your zeal, fidelity, and judgment."

As is well known, the only reason why this flotilla was organized and equipped in the Quartermaster's Department of the army, rather than by the Navy Department, was because the Quartermaster's Department had an available appropriation for that work, and the Navy Department had none, so that until the act of July 16, 1862 (12 Stat. L. 567), making the appropriation for the support of this fleet to the Navy Department, the Government was compelled to theoretically consider the Western flotilla as a part of the Quartermaster's Department, although in fact it was as much a part of the navy of the United States then as it ever became afterwards. The character of a capture, whether it be a land or marine capture, must be determined solely from what agencies effected it and not from what department authorized it. This capture was made by vessels commanded by officers of the United States navy reporting to and receiving orders from the Secretary of the Navy, upon navigable

waters of the United States, and, therefore, had all the elements of a marine capture. Since the case of *The Genesee Chief* (12 How. U. S. 443) and Fretz *v.* Bull (*idem* 466) all inland waters of the United States capable of navigation have been held to be within the jurisdiction of courts of admiralty, and, for the purposes of this discussion, equivalent to the high seas. In the case of *The Propellor Commerce* (1 Black 574), which was a libel in admiralty for a marine tort growing out of a collision on the Hudson river, this court says:

> "Locality, by all the authorities, is the test, in cases of tort, by which to determine the question whether the wrongful act is one of admiralty cognizance; and if it appears, as in case of collision, depredations upon property, illegal disposition of ships, or seizures for breach of revenue laws, that it was committed on navigable waters within the admiralty or maritime jurisdiction of the United States, then the case is one properly cognizable in the admiralty." (See also *Ex parte* Boyer, 109 U. S. 629.)

The fact that this fleet of gunboats was theoretically a part of the Quartermaster's Department of the army can in no way affect or modify its character as a portion of the naval armament of the United States. In the original organization of our Government the navy and army were both under the control of the head of the War Department, who was not Secretary of the Army nor Secretary of the Navy, but was Secretary of War (1st Stat. L. 49). The army was no less the military establishment of the United States then than it is now, nor was the navy, from the mere fact that it was under the same control as the army, any less the naval establishment, nor was its character as the naval establishment changed by the act creat-

ing the Navy Department. (1st Stat. L. 553.) Under both Departments it was the navy of the United States, and equally the *Conostoga*, *Tyler*, and *Lexington*, when they captured the *Eastport* at Cerro Gordo Landing, although theoretically a part of the Quartermaster's Department, were in fact a part of the navy of the United States. It seems to me that no question of this would have arisen but for certain decisions which give too much significance to the change of the appropriation for the maintenance of this fleet from the Quartermaster's Department to the Navy Department. In the case of 269½ bales of cotton (1 Woolworth, 236) which seems to have largely controlled the court below, Justice Miller seems to have based his opinion that there were no naval forces on the Western waters, upon this fact, and this fact alone, for he says:

> "Indeed, we know that no naval force then existed on these waters. The gunboats were made a part of the navy by order of the Government on the 1st day of October [1862], several days after the capture."

and further:

> "In short, the entire statement is consistent with the fact that the vessels and crews were in the employment of the War Department, and were used merely as transports to carry the troops."

These gunboats that captured the steamer *Eastport*, so far as this record shows, were never used to transport troops, but on the contrary were designed and used, from the beginning, as fighting machines, and it is a matter of history that this fleet, before the arrival of any land forces, compelled the surrender of Fort Henry. That capture might have been, as the court below says the capture of the *Eastport* might have been, effected by land forces, but the

fact remains that they were both effected by naval forces, and naval forces alone.

Act of March 3, 1800.

So far, I have proceeded on the theory that the capture must be made by a vessel belonging to the *navy* of the United States before it can be held to be a maritime capture and subject to the provisions of the act of March 3, 1800 (2 Stat. L. 17), and this seems to have been the view of the case entertained by the counsel for the Government and the court below. The first section of that act, which is the only one applicable to this case, is as follows:

> "That when any vessel other than a vessel of war or privateer, or when any goods which shall hereafter be taken as prize by any vessel, acting under authority from the Government of the United States, shall appear to have before belonged to any person or persons, resident within or under the protection of the United States, and to have been taken by an enemy of the United States, or under authority, or pretence of authority, from any prince, government, or state, against which the United States have authorized, or shall authorize, defence or reprisals, such vessels or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying for and in lieu of salvage, if retaken by a public vessel of the United States, one-eighth part, and if retaken by a private vessel of the United States, one-sixth part, of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration

thereof, shall be adjudged to pay for and in lieu of salvage one moiety of the true value of such vessel of war or privateer."

The steamer *Eastport* was a vessel belonging to a citizen resident within and under the protection of the United States, which had been taken by an enemy of the United States, but had not been used in any hostile demonstration against this Government. (Finding V, page 6.) At the time of its recapture it was upon navigable waters and therefore subject to be taken as prize and was so taken by a vessel acting under authority from the Government of the United States. *The General Cass*, Brown Adm. 334; *The Alabama*, 22 Fed. R. 449; *The City of Pittsburgh*, 45 Fed. R. 699; *The Eliza Ladd*, 3 Sawy. 519.

It seems to me that these facts completely make such a case as is contemplated by the first section of the act of 1800, and make it immaterial whether the vessel making the capture was a part of the United States navy or was acting under authority from the United States Government exercised through some other department thereof. At the time of the passage of the act of 1800 the United States had at least one other class of vessels besides those belonging to its navy, *i. e.*, revenue cutters (I Stat. L. 461–462), and I do not think there has been a day since the passage of that act that captures of this character made by revenue cutters would not have been held to be maritime prizes. If it be conceded that the *Conestoga*, *Tyler*, and *Lexington* were not a part of the navy of the United States, but were a part of the Quartermaster's Department of the army, they were at least vessels acting under authority from the United States Government, and the statute of March 3, 1800, is not intended to control captures made by the navy alone, but applies with equal

force to captures by vessels belonging to the War Department, the Customs Revenue Service, the Light-House Board, or any other branch of the Government requiring the service of vessels upon navigable waters. I therefore contend, whether the capture was made by a vessel belonging to the navy or a vessel belonging to the army, that in the absence of a condemnation and sale by a prize court, the Government, when it failed to return the recaptured steamer to its owner, a loyal citizen of the United States, as provided by the act of 1800, but appropriated it to public use, impliedly promised just compensation therefor, and claimant from that time had a cause of action distinct and separate from any created by the enabling act in this case.

CONDEMNATION.

It was contended in the court below that by the condemnation proceedings in the District Court for the Southern District of Illinois (Finding IX, page 9) under authority of the act of August 6, 1861 (12 Stat. L. 319), the claimant was lawfully divested of title to his portion of the steamer *Eastport*, and the title thereof vested in the United States. The absence of jurisdiction in that court is so apparent that I do not deem it necessary to do more than call the attention of the court to the fact that the proceedings were had without authority from the President of the United States as required by that act, and cite the court to Winchester's case (99 U. S. 372).

CONFEDERATE ARCHIVES.

The court below has found (Finding III, page 5) that the captured Confederate archives in the War Department show certain correspondence between officers and

officials of the Confederate States government tending to show that that government purchased the *Easport* from some one whose name the correspondence does not disclose. I respectfully submit that this finding should not have been made, since it is not a finding of the ultimate fact that the purchase was made. It is not even a finding that competent evidence was offered tending to establish that ultimate fact; but if it were true that such purchase was made, nothing in the record shows that it was made from Hugh Worthington, or with his consent. The record does show that the captain of the *Eastport*, against the consent and without the knowledge of the owner, took the vessel from Paducah, Ky., and ran her into the enemy's territory where she was taken (Find. III, p. 4). That act of the captain's was barratry or piracy, and in either event makes the recaptor, by the law of all civilized nations, bound to restore it (Wheat. Int. Law, sections 360–361). If she was not purchased from the captain but at a sale ordered by a Confederate prize court, the title would still remain in claimant and the duty to restore to him would be the same. In *The Lilla* (2 Sprague, 177) it was held that restitution of the vessel should be made to citizens of the United States although she had been condemned by a prize court established by the Confederacy, on the clear ground that a court of the United States could not recognize as valid the act of such a tribunal in case of property of its own citizens.

SALVAGE.

It may be contended that claimant is not entitled to recover without the payment of the salvage provided for under the act of 1800, but claimant could only become liable for this salvage when the vessel was brought into the court according to the provisions of that act. In the

United States *v.* Farragut (22 Wall. 423), this court, in treating of the recapture of vessels of loyal owners at New Orleans, says:

> "If the owners resided on that side of the line of bayonets spoken of in the prize cases (2 Black, 274), which adhered to the Union, then they were not liable to condemnation as prizes, for their owners could have interposed a claim in the prize court, and on payment of salvage their propety would have been restored to them."

This being the right in law of the resident loyal owner, he cannot be in any degree deprived of it by the failure of the captor to libel the vessel in a prize court, where salvage might have been awarded him and the property restored to its loyal owner upon such payment. The duty of the captor is so imperative that only under extraordinary circumstances, such as did not occur in this case, can it be excused. Jacker *v.* Montgomery, 13th How. 498; *Idem.* 18 How. 110; *The Dos Hermanos*, 2 Wheat. 76. By the failure to bring the property into court for adjudication, the captors are and should be foreclosed of their right of salvage. By their own negligence they have precluded their recovery. In violating the rights of the owners they have lost their own.

Measure of Damages.

The findings of the court below show the following to be the value of the use of said vessel from the time when it was fitted out as a gunboat to the time of its destruction, and the value of the boat itself:

Use of vessel from August 1, 1862, to April 17, 1864, 625 days, at $150 per day (Findings VI and VIII, pp. 8 and 9).	$93,750 00
Value of vessel (Finding VII, p. 9).....	30,000 00
Total.....	$123,750 00

Brought forward	$123,750 00
Less two-fifths not owned by claimant (Finding X, p. 14)	49,500 00
Amount due claimant	$74,250 00

In securing vessels for use on the Western rivers at this time it was the policy of the Government to charter them when it was possible, and to impress them when it was not; in either case, however, paying for the use of them so long as they were in the service, and reimbursing their owners when they were lost or destroyed. This is shown by the acts of 1863 and 1864 now embodied, so far as they pertain to this case, in sections 3483 and 3488 R. S. It is true that these statutes refer in terms to military service only, but by analogy they should control the recovery for naval charters and impressments as well, and should therefore control the recovery in this case, whether it be held that the steamer *Eastport* was in the military or naval service of the United States. If this vessel had been taken directly from Hugh Worthington, there is no question but that he would have received pay for its use from the time it was taken until it was destroyed, and would then have received pay for the value of the vessel itself. I think the purpose of the act giving jurisdiction in this case was to give to the heir the same rights as the said Worthington would have had if the vessel had been taken from him directly. It is, therefore, respectfully submitted that this judgment should be reversed and the court below directed to render a judgment in favor of the claimant for the sum of $74,250.

JOHN C. FAY,
Attorney for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

SARAH A. OAKES, APPELLANT,
v.
THE UNITED STATES.
No. 211.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

STATEMENT.

This is an appeal from a judgment of the Court of Claims dismissing the petition of the appellant in an action prosecuted under a special act of July 28, 1892 (27 Stat. L., 320).

The facts in the case are briefly as follows:

Early in the late civil war the captain of the steamer *Eastport*, plying on the Mississippi and other Western rivers, without the knowledge of the owners of the vessel, took her from Paducah, Ky., the port of her enrollment, to a place on the Tennessee River within the lines of the Confederate forces.

Shortly after the vessel reached the point within the Confederate lines she fell into their possession, whether by purchase from the captain of the vessel or otherwise does not definitely appear. Nevertheless, work was soon thereafter begun on the vessel, under the authority of the Confederate government, by which the vessel was undergoing transformation into a gunboat for use in the Confederate service. While this work was in progress, and before the vessel had been used in any hostile demonstration against the United States, she was captured by a detachment of men in small boats from certain gunboats of the United States Government and taken to Mound City, Ill., where the reconstruction into a gunboat was continued, and the vessel was thereafter used as such by the United States until blown up in 1864, by the United States officers in charge of her, to prevent her capture by the enemy.

The vessel was captured, as above stated, by the United States Government February 7, 1862, at which time the naval forces operating in all the Western rivers were under control and subject to the orders of the War Department.

Soon after the capture of the vessel, as above recited, certain libel proceedings were instituted against her in the district court of the United States for the southern district of Illinois, pursuant to the only then existing confiscation act, the one of August 6, 1861 (12 Stat. L., 319), wherein a decree in condemnation, forfeiting the vessel to the United States, was rendered, and the vessel ordered sold at public auction, which was done by the

marshal of the district, and the vessel bid in, in the name of the United States, for $10,000. All of which is fully set forth in the findings of fact rendered by the lower court.

SCOPE OF THE SPECIAL ACT.

No other action was taken in regard to the vessel, and the rights in connection therewith of any of its owners, prior to its capture from the Confederate forces, and nothing was done by the owners thereof until July 28, 1892, when the following special act (27 Stat. L., 320) was passed by Congress:

AN ACT to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington for his interest in the steamer *Eastport*.

Whereas it is claimed the steamer *Eastport* was taken by the United States anno Domini eighteen hundred and sixty-two, and converted into a gunboat; and

Whereas it is claimed at the time of such taking one Hugh Worthington, then of Metropolis, Massac County, Illinois, but since deceased, was the owner of three-fifths interest in said steamer, and no compensation has been paid to said Hugh Worthington or his heirs; and

Whereas his daughter, Mrs. Sarah A. Oakes, of Metropolis, Illinois, claims that Hugh Worthington was a loyal citizen, that she is his only heir at law, and is justly entitled to receive from the United States compensation for the value of her father's interest in said steamer: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred

upon the Court of Claims to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, and that from any judgment so entered by said Court of Claims either party may appeal to the Supreme Court of the United States, for compensation for the value of said Worthington's interest in said steamer *Eastport*. That upon proper petition being presented by said Sarah A. Oakes, her heirs, executors, or administrators, to said court, said court is authorized and directed to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due.

SEC. 2. That in case judgment shall be rendered against the United States, the Secretary of the Treasury shall be, and he is hereby, authorized and directed to pay the claimant, her heirs, executors, or administrators, whatever sum shall be adjudged by the court to be due, out of any money in the Treasury not otherwise appropriated.

Approved, July 28, 1892.

In the lower court the claimant contended, and still contends, that the act above quoted did more than remove the bar of the statute of limitation; that is, that rights other than remedial were conferred by the special act. Claimant also contended, and still contends, that the proceedings in the district court for the southern district of Illinois, resulting in the condemnation and sale of the vessel, were null and void. It is also contended by the claimant that the title of the owner was never divested. In support of this proposition the claimant relies upon the provisions of the *Act of March 3, 1800* (2 Stat. L., 16).

The answer to the first proposition, that the special act conferring jurisdiction upon the Court of Claims in this case did more than remove the bar of the statute of limitation, can not be better stated than in the langauge of the court below:

> When the statute subsequently says the court shall enter judgment if it be found that said claim is just, it means just in law, as previously prescribed. The rights to be determined are legal rights. * * * The court is authorized to judicially inquire into and ascertain the "just rights in law of the claimant and her ancestor. Otherwise the act would merely devolve upon the court the duty of ascertaining the facts, and then, without reference to the legal rights of the parties at the time of the capture or sale of the vessel, to proceed to assess the damages, thereby constituting the court a jury shorn of judicial discretion."

This question is fully discussed, and the inapplicability of the authorities cited by the claimant clearly shown, in the opinion of the lower court.

BUT ONE CAPTURE OF ARMY OR NAVY.

The claimant contended in the court below, and still contends, that "at the time of its recapture the vessel was upon navigable waters, and therefore subject to be taken as prize, and was so taken by a vessel acting under authority from the Government of the United States," and that, therefore, it was a maritime capture and subject to the provisions of the *Act of March 3, 1800* (2 Stat. L., 16).

In this connection counsel for appellant argues:

> If it be conceded that the *Conostaga*, *Tyler*, and *Lexington* were not part of the Navy of the United States, but were a part of the Quartermaster's Department of the Army, they were at least vessels acting under authority of the United States Government, and the statute of March 3, 1800, is not intended to control captures made by the Navy alone, but applies with equal force to captures of vessels belonging to the War Department, the Customs Revenue Service, the Light-House Board, or any other branch of the Government requiring the service of vessels upon navigable waters.

The court below disposed of the contention by holding that the taking of the vessel was not a maritime capture, but was a capture by the Army, and that therefore the title of the claimant's intestate thereby became divested and vested in the United States. In its opinion the court says:

> In the *Case 269½ Bales of Cotton* (1 Woolworth, 236–256) the court, by Mr. Justice Miller, in speaking of the capture of cotton on the 26th September, 1862, by vessels used as transports on the Mississippi River, said: "From that statement it is not at all inferable that the vessels named were any part of the naval force of the United States. Indeed, we know that no naval force then existed on those waters. The gunboats were made a part of the Navy by order of the Government on the 1st day of October, several days after the capture." And further along, at page 257, it is said: "In short, the entire statement is consistent with the fact that the vessels and crews were in the employment of the War Department, and were used merely as

transports to carry the troops; and it is consistent with no other supposition."

The counsel for the claimant replies to this proposition with the statement that the naval officers were not under the command of or even a part of the forces of the Army of the West except in theory, and he suggests that one reason why the flotilla was organized and equipped in the Quartermaster's Department of the Army rather than by the Navy Department was because the Quartermaster's Department had an available appropriation for the work and the Navy Department had none. The decision of the Court of Claims, with its abundant sustaining authorities, in answering this contention, finds clear and exact expression in the words of the cited opinion of Justice Miller, of this court, where he says:

> Indeed, we know that no naval force then existed on these waters. * * * In short, the entire statement is consistent with the fact that the vessels were in the employment of the War Department and were used merely as transports to carry troops.

Equally pertinent is the language of Justice Strong in the Cotton Plant Case (10 Wall., 580):

> There was nothing in the situation of the property that required peculiarly a naval force or maritime service to effect its capture.

The scope of the decision in the court below is presented in the following paragraphs from its opinion:

> It will not be necessary to consider the question of a joint capture by the Army and Navy, as the findings show that the recapture, if such it was, was by the officers and men of vessels in the Navy

under the control of the War Department, so that the Army and the naval forces within the territory or district of the captured vessel were necessarily acting under the orders of the same military commander.

We hold that the vessel was captured by the Army, and that therefore the title of the claimant's intestate thereby became divested and vested in the United States.

It is well settled and not questioned in this case that if the vessel in controversy was captured by the Army the title thereto passed as soon as the capture was complete; while if captured by the Navy as prize the title would not pass until condemned as provided by law. (Halleck's International Law, ch. 30, secs. 1 and 2; the ship *Resolution*, 2 Dall., 1; the *Adventure*, 8 Cranch, 221; the *Sally Magee*, 3 Wall., 451; the *Peterhoff*, Blatchford, R., 620; the *Neustra*, etc., 108 U. S., 92.)

This phase of the question is so fully and so ably treated in the opinion of the Court of Claims that a further discussion of it would be needless elaboration.

"A VESSEL OF WAR" IN THE ACT OF 1800.

In the lower court the claimant contended, and in the brief and argument for this court still contends, that the facts in this case are such as to bring it within the provisions of the *Act of 1800* (2 Stat. L., 16).

The first section of that act, which is the only one applicable to this case, is as follows:

That when any vessel other than a vessel of war or privateer, or when any goods which shall hereafter be taken as prize by any vessel, acting under

authority from the Government of the United States, shall appear to have before belonged to any person or persons residents within or under the protection of the United States, and to have been taken by an enemy of the United States, or under authority, or pretence of authority, from any prince, government, or state against which the United States have authorized, or shall authorize, defence or reprisals, such vessels or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying for and in lieu of salvage, if retaken by a public vessel of the United States, one-eighth part, and if retaken by a private vessel of the United States, one-sixth part of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration thereof, shall be adjudged to pay for and in lieu of salvage one moiety of the true value of such vessel of war or privateer.

In concluding the opinion of the court below, Judge Peelle said:

> And it is therefore unnecessary to consider the other, perhaps more important, question as to whether the captured vessel, which was undergoing conversion into a gunboat for use in the Confederate service, would fall within the meaning of the act of 1800 (*supra*) as "a vessel of war" as set forth in the first clause of the section quoted.

The consideration of this question is, however, pertinent here.

If the vessel, when captured by the Union forces, was "a vessel of war," as set forth in the first clause of the section, it is clearly excluded from the provisions of the act of 1800. What are the facts?

Finding V, in the court below, clearly sets forth that "while said vessel was lying under the bank of the river and being converted into a gunboat, for use in the Confederate service as aforesaid, *with the iron and other material therefor on board* * * * she was captured," etc.

In Vattel's Law of Nations we find (p. 394) that the definition of "the things which belong to war and are the instruments of war" are "arms of all kinds, artillery, gunpowder, saltpeter and sulphur of which it is composed, ladders, gabions, tools and all other implements for sieges, *materials for building ships of war;* * * * these always belong to war." In this connection, the facts show that the vessel had become so far identified as a vessel of war as to have *lost all value except as such.* That additional labor was required upon the vessel may show it to be unfinished, but does not show that the parts and materials made for adjustment were not really a part of the unfinished subject. The vessel was "being converted into a gunboat, for use in the Confederate service, with the iron and other material therefor on board; * * * the vessel was dismantled, her upper works, cabin, pilot and wheel house having been cut away."

In this condition the vessel was taken by the Union forces to Mound City, Ill., and at that time was so nearly

a vessel of war, and so nearly in a condition for war service, that the Union forces, upon the recommendation of Commodore Foote, continued the work, which the Confederate forces had begun, and shortly thereafter the vessel went into commission with a full complement of men and officers of the United States Navy, and was so used on the Mississippi River as a part of a Mississippi squadron, and continued in active service as a gunboat until April 17, 1864 (Finding VI, court below).

Surely it can not be denied that the *Eastport* when taken by the Union forces was, to all intents and purposes, the same vessel of war which was afterwards used by the Union forces for two years, with the simple addition by them of such work as was necessary to complete the vessel of war which the Confederates were making of the *Eastport* when she was captured.

In first Brock (p. 428) Chief Justice Marshall, in delivering the opinion of the court in *The Brig Wilson Case*, said:

> The term "ship or vessel of war" has been considered, and I think properly considered, as a generic term, including both national ships and private armed ships. The authorities cited at the bar show that courts and writers on public law have used the term in this general sense. If either the language or the objects of this law be consulted I think they strengthen this natural and comprehensive construction of these words. * * * The privateer which acts as a merchant vessel must be treated and considered as a merchant vessel.

And we submit that, conversely, the merchant vessel which acts or is prepared to act, or which is being pre-

pared to act, as a vessel of war must be treated as "a vessel of war."

If the *Eastport* when captured was not a vessel of war, what was it?

It can not be said to have been any kind or character of vessel other than a vessel of war nearing completion. When captured the vessel was dismantled; her upper works, cabin, pilot, and wheelhouse were cut away; iron and other material necessary for making the *Eastport* a vessel of war were on board. Shortly thereafter the vessel, with a full complement of men and officers, took her place as one of the vessels of war of the United States Navy. We must insist that when captured the *Eastport* had lost all identification and all value except as a vessel of war; that she was in fact a vessel of war, and, as such, excluded from the provisions of the act of 1800.

THE VESSEL ITSELF CONTRABAND.

As an additional reason why appellant should not recover in this case, we contend that under the *act of August 6, 1861* (12 Stat. L., 319), the vessel itself was contraband property, it having been voluntarily delivered to the enemy to be used by them as a vessel of war by the agent or employee of the owner thereof. Thus the title in the vessel was divested as soon as the owner or his agent voluntarily suffered the property to fall into the hands of the enemy. It was, from and after that time, lawful subject of capture wherever found, and, when captured, whether as prize or otherwise, the title at once vested in the United States. The first section of the act

of August 6, 1861, under authority of which all proceedings in this matter were instituted, reads as follows:

> That if, during the present or any future insurrection against the Government of the United States, after the President of the United States shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employee, shall purchase or acquire, sell or give any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection, etc. * * * All such property is hereby declared the lawful subject of prize and capture wherever found. * * *

We presume that it will be conceded, in this connection, that if the owner of the vessel had personally delivered her into the possession of the enemy, or had personally suffered her to fall into their possession, he would have forfeited thereby all right to recover the value of the vessel if recaptured by the Union forces. Is it not, therefore, equally clear that by the provisions of the act of August 6, 1861, *supra*, the owner is held to a strict and identical responsibility, and made to occupy precisely the attitude and be responsible for the acts of his "agent or employee?"

In this case, while it was not the owner of the vessel who "sold or gave" the property "with intent to use or employ the same, or suffer the same to be used or em-

ployed, in aiding, abetting, or promoting" the insurrection, it was his agent, or in any event his "employee" (the captain of the vessel, so appointed by the owner thereof), who thus sold or gave the property to the enemy, or who at least voluntarily suffered it to come into their possession.

The significance of this language is twofold; in the first place, it distinctly directs that the "agent, attorney, or employee" of the owner of the property, of whatsoever kind or description, is equally culpable with the owner himself, wherever the latter might be, and the action of the agent, attorney, or employee is made the action in fact of the owner of the property; secondly, such property is declared "to be lawful subject of prize and capture wherever found." Therefore, under the above-cited section of the act under which proceedings in this case were instituted and terminated, the owner of the vessel became merged in person and interest in the captain of the vessel, who, as his "agent or employee," under the statute, was to all intents and purposes the owner of the offending property.

CONDEMNATION PROCEEDINGS UNDER ACT AUGUST 6, 1861.

We have contended that claimant's intestate had no just rights in law, because—

First. The taking of the vessel by a detachment of men from the Union forces was a capture by the Army, and that therefore the title at once vested in the United States.

Secondly. That by the act of March 3, 1800, upon which claimant relies, upon the supposition that the taking of the vessel was a prize capture, claimant's intestate is barred from recovery because, when taken by the Union forces, the property was "a vessel of war."

Thirdly. That the vessel when captured by the Union forces was itself contraband property, under the act of August 6, 1861, and that therefore all rights to a recovery for the value thereof were forfeited by the owner thereof when, through his "agent or employee," he suffered it to be voluntarily turned over to the enemy for use by them against the Union.

We would, indeed, be willing to rest upon these three propositions; but it is insisted by counsel for appellant that, upon the supposition that the taking of the vessel was a capture by the Navy, a prize capture, the subsequent condemnation proceedings were fatally irregular. This phase of the question, therefore, we will briefly discuss.

August 6, 1861, Congress passed an act providing for the disposition of property captured in any manner, and which the owner had used or allowed to be used in aid of the insurrection against the United States. The act provides for an adjudication of the facts in the circuit or district courts. (12 Stat. L., 319.)

Proceedings under this statute, while not cases in admiralty, were to conform to the practice and procedure in admiralty. (*Insurance Co.* v. *United States*, 6 Wall., 759.)

In ordinary use the words "prizes and capture" refer, doubtless, to captures on the waters as maritime prize;

but in the section under consideration (act August 6, 1861) they plainly refer to property taken on land as well as on water. In this the provisions of the act of August 6, 1861, differ vitally from the provisions of the act of 1800.

The libel, confiscation, and sale of this vessel of war, in the district court for the southern district of Illinois, conformed in all respects to the provisions of the August 6, 1861, statute.

Finding IX of the court below recites in full the record of the United States district court for the southern district of Illinois, and it there appears that from the time of the filing of the libel by the district attorney to and including the decree of the court the proceedings were regular in every respect and carried all the force and power necessary to lawfully divest claimant of title to his interest in the steamer *Eastport* and vest it in the United States.

The second section of the act provides "that such prize and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized or into which they may be taken and proceedings first instituted."

Following the above section we find the directions of section 3, as follows:

> SECTION 3. *And be it further enacted*, That the Attorney-General, or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the bene-

fit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

The findings of the court below, setting out the proceedings before the district court, show that the requirements of the above section were fully complied with.

It is contended, however, that the proceedings were void because there was no Presidential order authorizing them. In support of this position counsel for appellant cites the *Winchester Case* (99 U. S., 372).

In the Winchester Case it was contended by the Attorney-General that the proceedings could be sustained under the confiscation act of July 17, 1862. In delivering the opinion of the court Mr. Justice Field referred only to the act of July 17, 1862, and to the captured and abandoned property act of March 3, 1863 (12 Stat. L., 820), and to no others. The Winchester Case had nothing whatever to do with the act of August 6, 1861, under which the libel proceedings in *the case at hand* were instituted. The seizure in the Winchester Case did not occur until February, 1863, when the act of July 17, 1862, was in full force and effect, whereas in the case at hand the seizure took place February 7, 1862, necessarily *before* the confiscation act of July 17, 1862, was law. Every detail of proceeding was under the act of August 6, 1861. This court's decisions in the case of *Pelham* v. *Rose* (9 Wall., 103), *The Confiscation Cases* (20 id., 92), and the *Winchester Case* (99 U. S., 372) were based upon a consideration of the act of July 17, 1862, and the captured

and abandoned property act of March 3, 1863, and had no reference whatever to the act of August 6, 1861, under which the United States district court proceeded in the case now under consideration.

While we insist that the proceedings in this case were not had under the act of July 17, 1862, but under the act of August 6, 1861, we nevertheless desire to invoke the principle here that the act of the Attorney-General, or the district attorney, or the marshal, constituted the act of the President, and must be regarded, in the case of property liable to seizure and confiscation, as a direction given by the President.

In this connection let us refer this court to the language of its opinion in *The Confiscation Cases* (20 Wall., 108–109):

> Undoubtedly, also, only such property as has been seized by Executive order is within the power of that court for confiscation proceedings. But it is a mistaken assertion that the record in this case does not show an Executive seizure of the property condemned before the district court assumed any jurisdiction over it. * * * If the seizure was made by virtue of the act of Congress, as the information avers it was, it was necessarily caused to be made by the President, for he only was empowered by the act to cause it. (Act of July 17, 1862.) Then the Attorney-General must have been the agent of the President to give instructions to the district attorney, and through him to the marshal. The language of the statute is: "It shall be the duty of the President to cause the seizure," etc. This implies that the seizure is to be made by the agents of the President, and a direction given by the Attorney-Gen-

eral to seize property liable to confiscation under the act of Congress must be regarded as a direction given by the President. In *Wilcox* v. *Jackson* (13 Peters, 498) it was ruled that the President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. The same doctrine was asserted in *United States* v. *Eliason* (16 Peters, 291).

Still more significant, however, is the language of the above-cited opinion, as follows:

> But whether this be so or not, it is *sufficient that the information in this case avers the seizure was made by virtue of an act of Congress.* It must therefore have been caused by the President.

In Finding IX of the court below we find the fact set out that the libel filed by the United States district attorney distinctly stated:

> Said seizure was made for the reason that said steamer was used by and with the knowledge and consent of the owner in aiding the present rebellion against the United States, *contrary to the act of August 6, 1861.*

There we find the requirement of the law, as stated in the above-cited opinion, fully complied with, inasmuch as the information avers the seizure was made by virtue of and contrary to the provisions of an act of Congress.

It would seem that this would be sufficient to overcome the contention of appellant that no Executive order, or its equivalent, preceded the libel, condemnation, and sale of the captured property.

If, therefore, this court should decline to accept the view of the court below, that the capture in this case was

a capture of the Army, and not of the Navy, and should hold, on the contrary, that it was a marine capture; that the property was the lawful subject of prize, and that proper condemnation proceedings should have followed, then, we insist that we have shown that even in this view of the case the proceedings in the district court were wholly regular and entirely in conformity to the act of August 6, 1861, and that the title of the claimant was therefore divested, and all rights duly vested in the United States according to law.

And finally, even under the act of 1800, upon which appellant relies, the subject of this action is clearly excluded from the benefits of the act by the additional provisions that recovery after recapture is only possible in case of "such vessels or goods *not having been condemned as prize by competent authority.*" In this case the condemnation proceedings followed the only alleged capture "as prize," and were regular and the authority competent, and the offending property for this additional reason thus excluded from the provisions of the act of 1800.

LOUIS A. PRADT,
Assistant Attorney-General.
JOHN G. CAPERS,
Assistant Attorney.

OAKES *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 19. Argued April 20, 1898. — Decided May 22, 1899.

Under the act of July 28, 1892, c. 313, conferring jurisdiction on the Court of Claims "to hear and determine what are the just rights in law" of the daughter and heir of Hugh Worthington to compensation for his interest in a steamboat taken and converted into a gunboat by the United States during the war of the rebellion, and, if it "shall find that said claim is just," to render judgment in her favor for the sum found due, the issue to be determined depends upon the question what had been his legal right to such compensation, embracing all questions, of law or of fact, affecting the merits of the claim.

Whether the capture of a steamboat on the western waters within the lines of the Confederate forces in February, 1862, by part of the naval forces of the United States on those waters, commanded by officers of the Navy, and under the general control of the War Department, but no land forces being near the scene of the capture or taking any active part therein, was a capture by the Army — *quære.*

A libel for the condemnation, under the act of August 6, 1861, c. 60, of a steamboat captured and taken into firm possession by naval forces of the United States on the western waters during the war of the rebellion, was filed by the district attorney in the District Court of the United States for a district into which she had been brought; the libel alleged that she

Statement of the Case.

had been seized by a quartermaster, for the reason that she was used with her owners' knowledge and consent in aiding the rebellion, contrary to that act; she was taken into the custody of the marshal under a writ of attachment from the court; notice was published to all persons to appear and show cause against her condemnation, and no one appeared or interposed a claim. *It seems*, that a decree thereupon rendered for her condemnation and sale was valid against her former owners and all other persons.

The act of March 3, 1800, c. 14, § 1, providing that vessels or goods of a person resident within or under the protection of the United States, taken by an enemy and recaptured by a vessel of the United States, shall be restored to the owner on payment of a certain sum as salvage, has no application to property captured by the United States, which had come into the enemy's possession by purchase or otherwise, with the consent of the owner or of his agent, and not by capture or by other forcible and compulsory appropriation.

Communications between high civil and military officers of the so-called Confederate States, preserved in the Confederate Archives Office of the War Department of the United States, or duly certified copies thereof from that office, are competent evidence upon the question whether possession of a steamboat belonging to a citizen of the United States was obtained by the Confederate States by capture or by purchase.

A petition under the act of July 28, 1892, c. 313, for compensation for an interest in a steamboat, which alleges that she was captured by the insurgents and recaptured by the United States during the war of the rebellion, is not sustained by evidence that she was captured by the United States from the Confederate forces after they had obtained possession of her by purchase.

THIS was a petition under the act of Congress of July 28, 1892, c. 313, (copied in the margin,[1]) filed in the Court of

[1] An act to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington for his interest in the steamer Eastport.

Whereas it is claimed the steamer Eastport was taken by the United States Anno Domini eighteen hundred and sixty-two, and converted into a gunboat; and

Whereas it is claimed at the time of such taking one Hugh Worthington, then of Metropolis, Massac County, Illinois, but since deceased, was the owner of three fifths interest in said steamer, and no compensation has been paid to said Hugh Worthington or his heirs; and

Whereas his daughter, Mrs. Sarah A. Oakes, of Metropolis, Illinois, claims that Hugh Worthington was a loyal citizen, that she is his only heir at law, and is justly entitled to receive from the United States compensation for the value of her father's interest in said steamer: Therefore

Be it enacted by the Senate and House of Representatives of the United

Claims, January 9, 1895, by Sarah A. Oakes, the heir at law and next of kin of Hugh Worthington, to recover compensation for his interest in the steamboat Eastport, alleged in the petition to have been captured by the insurgents, and recaptured by the United States, during the war of the rebellion.

The facts of the case, as found by the Court of Claims, were in substance as follows:

At the outbreak of the war of the rebellion, the steamboat Eastport, of 570$\frac{3}{95}$ tons burthen, duly enrolled at Paducah, Kentucky, and commanded by Captain Elijah Wood, was plying between the ports of Nashville, Tennessee, and New Orleans, Louisiana, engaged in the cotton trade. After the beginning of the war, she continued, under Wood's command, to ply between points on the Ohio River until May, 1861, when, in consequence of the blockade of the Mississippi River by the United States forces at Cairo, Illinois, she was tied up at Paducah, and there remained until August, 1861, undergoing extensive repairs under the orders of Captain Wood, and of Hugh Worthington, who was the owner of three fifths of her, the remaining two fifths being owned by two other persons.

About the last of August, or early in September, 1861, when

States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights in law of the said Sarah A. Oakes, as heir of Hugh Worthington, deceased, and that from any judgment so entered by said Court of Claims either party may appeal to the Supreme Court of the United States, for compensation for the value of said Worthington's interest in said steamer Eastport. That upon proper petition being presented by said Sarah A. Oakes, her heirs, executors or administrators, to said court, said court is authorized and directed to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due.

SEC. 2. That in case judgment shall be rendered against the United States, the Secretary of the Treasury shall be, and he is hereby, authorized and directed to pay the claimant, her heirs, executors or administrators, whatever sum shall be adjudged by the court to be due out of any money in the Treasury not otherwise appropriated. 27 Stat. 320.

the United States forces were about to take possession of Paducah, and while the Eastport was in the possession and under the control of Captain Wood, he took her, with a small crew, without Worthington's knowledge or consent, from Paducah up the Tennessee River to a place near the mouth of the Sandy River, a few miles above Fort Henry, within the lines of the Confederate forces. Captain Wood returned to Paducah a few months afterwards, and continued to reside there until his death, about the close of the war. What disposition he made of the Eastport does not appear, although papers in the Confederate Archives Office show what is stated in the certificate copied in the margin.[1] Nor does it appear whether the sum of money stated therein was paid to Captain Wood, nor whether he ever rendered an account thereof to the other owners, nor whether they received any part of that sum, nor where they are, nor what has become of their interests in the Eastport, nor why they are not seeking payment for the value thereof.

Some time between September, 1861, and February, 7, 1862,

---

[1] Under date of October 31, 1861, General L. Polk, C. S. Army, telegraphed from Columbus, Kentucky, to the Secretary of the Navy, C. S., that "the price of the steamer Eastport is $12,000;" and on the same date J. P. Benjamin, acting Secretary of War, C. S., telegraphed to General L. Polk directions to "buy the steamer Eastport if thought worth $12,000 demanded."

Under date of November 28, 1861, General L. Polk, in a letter from Columbus, Kentucky, addressed to General A. S. Johnston, C. S. A., stated that he bought the steamer Eastport by authority of the Secretary of the Navy.

Under date of January 5, 1862, General L. Polk wrote to J. P. Benjamin, Secretary of War, C. S., as follows: "By virtue of the authority from the War Department of October 31, I bought the steamer Eastport, and she is now undergoing the necessary alterations to convert her into a gunboat."

Under date of January 16, 1862, J. P. Benjamin, Secretary of War, C. S., wrote to General L. Polk as follows: "I shall order the necessary funds forwarded at once for the Eastport."

Under date of February 2, 1863, General Polk, in a statement to the C. S. Secretary of War of the disbursement of certain moneys, gives as one item, "Am't expended in purchase of steamer Eastport as per receipt of Major Peters, A. Q. M., $9688.92."

No further information on the subject of the within inquiry has been found in said archives.

By authority of the Secretary of War: F. C. AINSWORTH,
Colonel U. S. Army, Chief of Office.

the Eastport was in the possession of the Confederate forces, but whether by reason of capture, or of purchase from Captain Wood, does not appear; and before the latter date she was taken by those forces to Cerro Gordo, Tennessee, and work was there begun to transform her into a gunboat for use in the Confederate service.

On February 7, 1862, while she was lying under the bank of the Tennessee River near Cerro Gordo, and being converted into a gunboat for use in the Confederate service, with the iron and other materials therefor on board, and having been dismantled, and her upper works, cabin and pilot-house cut away, but before she had been completed, or had been used, or was in condition for use, in any hostile demonstration against the United States, she was boarded under the fire of the enemy (whether that fire was from the vessel or from the land does not appear) and captured by detachments of men in small boats from three United States gunboats, commanded by a lieutenant in the Navy, and part of the naval forces on the western waters, then under the control of the War Department, and commanded by Captain Andrew H. Foote, who was serving under a commission from the President of August 5, 1861, appointing him a captain in the Navy, and under an order from the Secretary of the Navy of August 30, 1861, directing him "to take command of the naval operations upon the western waters, now organizing under the direction of the War Department," and to proceed at once to St. Louis, to place himself in communication with Major General Fremont, commanding the army of the West, and to coöperate fully and freely with him as to his own movements, and to make requisitions upon the War Department through him. Immediately after the capture, Captain Foote reported his operations, together with the report of the lieutenant commanding the gunboats, to the Secretary of the Navy, who communicated them to Congress. At the time of the capture, no land forces were near the scene thereof, or took any active part therein.

The Eastport was brought by her captors to Mound City, Illinois, on the Ohio River, arriving there about February 26, 1862; and was there, on the recommendation of Captain

Foote, converted by the United States into a gunboat; and about August, 1862, went into commission as such with a full complement of officers and men of the navy; and continued in the service as part of the Mississippi squadron until April, 1864, when she was sunk by running upon a torpedo, and was blown up by her commander to prevent her capture by the Confederate forces. The Eastport and all other vessels of the Navy performing services on the western waters were under the control of the War Department until October 1, 1862, when they were turned over to the Navy Department, pursuant to the act of Congress of July 16, 1862, c. 185. 12 Stat. 587.

On July 17, 1862, in the District Court of the United States for the Southern District of Illinois, the district attorney of the United States filed a libel in admiralty against the Eastport, alleging "that on or about the 20th day of June, A.D. 1862, in the Mississippi River near Columbus, Kentucky, there was seized by George D. Wise, captain and assistant quartermaster, with gunboat flotilla, (and which he hereby reports for condemnation) the steamer Eastport, and which was brought into said district. Said seizure was made for the reason that said steamer was used by and with the knowledge and consent of the owner in aiding the present rebellion against the United States, contrary to the act of August 6, 1861. The said attorney therefore asks that process of attachment may issue against said steamer, and the monition of this honorable court, and that all persons having an interest in the same may be made parties herein, and that on a final hearing of this case your honor will adjudge and decree condemnation of said boat and order that the same may be sold." Thereupon the court issued a monition, reciting that the libel had been filed by the district attorney and Captain Wise; and commanding the marshal to attach the Eastport and detain her in his custody until the further order of the court; and to give notice, by publication in a certain newspaper published at Springfield in that district for fourteen days before the day of trial, "and by notice posted up in the most public manner for the space of fourteen days at or near the place of trial, of such seizure and libel, to all persons claiming the said steamer

Statement of the Case.

Eastport, boats, tackle, apparel and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel," to appear before the court at Springfield on September 2, 1862. The marshal's return on the monition stated that by virtue thereof he had "attached the within named boat, and made proclamation of the same;" and notice was published as ordered. And on that day the court entered a decree, reciting the attachment and notice, and that, notwithstanding proclamation made, no one had appeared or interposed a claim; and adjudging "that the default of all persons be, and the same are, accordingly hereby entered, and that the allegations of the libel in this cause be taken as true against said property, and that the same be condemned as forfeited to the United States," and be sold by the marshal. Pursuant to that decree the Eastport was sold October 4, 1862, by the marshal to the United States for the sum of $10,000, which, after deducting allowances to the clerk, to the marshal and to the district attorney, was ordered by the court to be "equally divided between the United States and George D. Wise, the informer herein."

Of those proceedings, Hugh Worthington had no notice or knowledge until after the sale of the vessel under them; but whether her other owners or Captain Wood had any does not appear.

Before and throughout the war, Worthington was a citizen and resident of Metropolis, Illinois, about ten miles above Paducah, and was loyal to the United States, and gave no aid or comfort to the rebellion. He died in March, 1876, intestate and without property, and having received no compensation from the United States for the use or value of the Eastport. The claimant Sarah A. Oakes, is his daughter, and his sole surviving heir at law and next of kin.

When Captain Wood ran the Eastport up the Tennessee River, she was worth $40,000. When she was captured by the United States forces, she was worth $30,000. During the time she was used by the United States, a fair and reasonable rental for her was $150 a day.

The Court of Claims decided that the claimant was not entitled to recover against the United States, and dismissed the petition. 30 C. Cl. 378. The claimant appealed to this court.

Mr. John C. Fay for appellant.

Mr. Assistant Attorney General Pradt for appellees. *Mr. Assistant Attorney John G. Capens* was on his brief.

Mr. Justice Gray, after stating the case as above, delivered the opinion of the court.

The special act of Congress of July 28, 1892, c. 313, under which the petition in this case was filed, confers jurisdiction upon the Court of Claims "to hear and determine what are the just rights in law" of the claimant, as the daughter and heir at law of Hugh Worthington, to compensation for the value of his interest in the steamboat Eastport, alleged to have been taken by the United States in 1862, and converted into a gunboat; and authorizes and directs that court, upon her petition, "to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just," to render judgment in her favor and against the United States for whatever sum shall be found due. 27 Stat. 320.

Under this act, the question whether "said claim is just" is the same as the question "what are the just rights in law" of the claimant as Worthington's daughter and heir; and this necessarily depends upon the question what had been his legal right to compensation from the United States for the value of his interest in the vessel.

The act neither recognizes the claim as a valid one, nor undertakes to pass upon its validity; but simply empowers the Court of Claims to hear and determine whether the claim is valid or invalid; and the determination of that issue embraces not only the questions whether the claimant was the daughter and heir at law of Worthington, whether he was a loyal citizen of the United States, whether he was the

owner of three fifths of the Eastport, and whether the vessel was taken and applied to the use of the United States, but all other questions, of law or of fact, affecting the merits of the claim. *United States* v. *Cumming*, 130 U. S. 452.

The leading facts of the case, as found by the Court of Claims, are as follows: Worthington was a loyal citizen of the United States, residing at Metropolis in the State of Illinois; and the claimant was his daughter and only heir at law. Early in the war of the rebellion, in consequence of the blockade of the Mississippi River by the forces of the United States, the Eastport was tied up at Paducah in the State of Kentucky, her home port, undergoing extensive repairs under the orders of her master, Captain Wood, and of Worthington, who owned three fifths of her. She was afterwards taken by Wood, without Worthington's knowledge or consent, up the Tennessee River within the lines of the Confederate forces, and came into their possession; and while in their possession, and being transformed into a gunboat for use in the Confederate service, having on board the iron and other materials therefor, and having been dismantled, and her upper works, cabin and pilot-house cut away, but before she had been completed or used, or was in condition for use, in any hostile demonstration against the United States, she was captured by part of the naval forces of the United States on the western waters, then under the control of the War Department. No land forces took part in the capture, or were in the neighborhood at the time. The Eastport was immediately brought by her captors to Mound City, Illinois, and was afterwards converted by the United States into a gunboat, and put in commission in the Navy as such.

The questions of law presented by the record are not free from difficulty.

By the law of nations, as recognized and administered in this country, when movable property in the hands of the enemy, used, or intended to be used, for hostile purposes, is captured by land forces, the title passes to the captors as soon as they have reduced the property to firm possession; but when such property is captured by naval forces, a judicial

decree of condemnation is usually necessary to complete the title of the captors. 1 Kent. Com. 102, 110; Halleck's International Law, c. 19, § 7; c. 30, § 4; *Kirk* v. *Lynd*, 106 U. S. 315, 317.

The Eastport, at the time of her capture by the forces of the United States, was in the hands of the Confederate forces, and was being transformed into a gunboat for use in the Confederate service, with the iron and other materials therefor on board. Although not yet in condition for hostile use, she was clearly intended for that use. Consequently if, as the Court of Claims held, her capture was made by the Army of the United States, it cannot be doubted that the capture was at once complete upon her being taken into the possession of the national forces, and brought by them to Mound City, Illinois, in February, 1862.

The grounds on which the decision of the Court of Claims proceeded were that by the Army Appropriation Act of July 17, 1861, 12 Stat. 263, there was appropriated for "gunboats on the western rivers, one million dollars;" that, at the time of the capture of the Eastport, the gunboats and the naval forces of the United States on those rivers were under the control of the War Department; that she was on inland waters, and could not be regarded as maritime prize; that she was lying dismantled by the bank of a river, where the seizure might as well have been made by a detachment from the Army, as by one from the Navy; and that, in view of these facts, the Eastport must be considered as having been captured by the Army.

In support of that conclusion, reference was made to *United States* v. 269½ *Bales of Cotton*, Woolworth, 236. But that case was wholly different from the case at bar. In that case, a battalion of cavalry, commanded by an officer of the Army of the United States, went in vessels in the service of the United States up the Mississippi River, and landed in the State of Mississippi, and penetrated into country in the control of the Confederate forces, and, after a conflict with them, took from their possession a quantity of cotton, and brought it by the river to the State of Arkansas; and Mr. Justice

Miller, acting in the Circuit Court, held that the cotton so captured was not within the jurisdiction of a prize court. The grounds of his decision are sufficiently shown by the following extract from his opinion:

"It is not supposed or alleged that any of these vessels were officered by government officers. They were not even armed vessels, and could not take part in any action, or contribute in any manner by belligerent force to the capture. It is not shown that they remained after they landed the forces; and the fair inference is that they did not. It is averred that the cotton was conveyed by the soldiers to the river, and that it was taken thence to the State of Arkansas; but it is not alleged that it was so taken by the vessels. In short, the entire statement is consistent with the fact that the vessels and crews were in the employment of the War Department, and were used merely as transports to carry the troops; and it is consistent with no other supposition. It is also evident that the capture was not made on the banks of the river, but some distance inland, where the vessels could render no other assistance than to land the forces, and receive them again. I cannot conceive that the employment by the Government of unarmed steamboats, for the mere purpose of transporting troops from one point to another on the Mississippi River, can render every capture made by the troops or detachments so transported prize of war, and let in the crews and officers of those vessels to a share of the prize money. Such vessels are in no sense war vessels, and are neither expected nor fitted to take part in engagements." Woolworth, 256, 257.

In the case at bar, on the other hand, it appears, by the facts found by the Court of Claims, that the Eastport, while waterborne, was boarded and taken by detachments of men in small boats from three United States gunboats, armed vessels, commanded by a lieutenant in the Navy, and part of the naval forces on the western waters, commanded by a captain in the Navy, who reported the capture to the Secretary of the Navy; and that, at the time of the capture, no land forces were near the scene thereof, or took any active part therein. Under these circumstances, we are not pre-

pared to hold that the capture was made by the Army, and not by the naval forces of the United States, although the latter, at the time and place, were under the general control of the War Department.

If it was not a capture by the Army, it was clearly a capture by the naval forces; and the United States rely upon the proceedings for the condemnation and sale of the Eastport in the District Court of the United States for the Southern District of Illinois, which are stated in the record.

Those proceedings, as appears on the face of the libel, were instituted under the act of Congress of August 6, 1861, c. 60, the material provisions of which are as follows:

Section 1 enacts that, if the owner of any property, of whatsoever kind or description, "shall purchase or acquire, sell or give," with "intent to use or employ the same, or suffer the same to be used or employed," or "shall knowingly use or employ, or consent to the use and employment of the same," in aiding, abetting or promoting the then existing insurrection, "all such property is hereby declared to be lawful subject of prize and capture, wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated and condemned."

Section 2 gives jurisdiction of the proceedings for condemnation of such property to "the District or Circuit Court of the United States having jurisdiction of the amount, or in admiralty, in any district in which the same may be seized, or into which they may be taken and proceedings first instituted."

Section 3 provides that "the Attorney General, or any district attorney of the United States [in the district] in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts." 12 Stat. 319.

In the proceedings for the condemnation of the Eastport, the libel alleged that she had been seized, in June, 1862, by

an assistant quartermaster, "with gunboat flotilla," and that "said seizure was made for the reason that said steamer was used by and with the knowledge and consent of the owner in aiding the present rebellion against the United States, contrary to the act of August 6, 1861." This is a sufficient allegation that she was so used with the knowledge and consent of her owner, as well as that she was seized for that reason, and brings the case within the first section of that act. The proceedings were in conformity with the practice in admiralty, and were not governed by the strict rules that prevail in regard to indictments or criminal informations at common law. *Union Ins. Co.* v. *United States*, 6 Wall. 759, 763; *Confiscation cases*, 20 Wall. 92, 104–107.

The libel was filed, as required by the second and third sections of that act, by the district attorney of the United States, in the District Court of the United States, in a district into which the Eastport had been brought. The libel seems to have been filed by the district attorney on the information of the assistant quartermaster; but this was unimportant for any purpose, except for the distribution of the proceeds of the sale after condemnation.

The expressions in the opinions in *The Confiscation cases*, 20 Wall. 92, 109, and in *United States* v. *Winchester*, 99 U. S. 372, 376, cited by the appellant as tending to show that the proceedings for condemnation were void, for want of a preliminary order of the President of the United States directing the seizure of the Eastport and the institution of the proceedings, were delivered in cases in which proceedings for the confiscation of land, or of cotton captured on land, were sought to be maintained under the act of July 17, 1862, c. 195, (12 Stat. 589,) and are not easily to be reconciled with earlier judgments of this court under the same act. See *Pelham* v. *Rose*, 9 Wall. 103; *Miller* v. *United States*, 11 Wall. 268.

But the act of 1861 differed materially, in its object, and in its provisions, from the act of 1862. As was observed by Chief Justice Waite, speaking for the court, in *Kirk* v. *Lynd*, 106 U. S. 315, the act of 1861 was passed by Congress in the exercise of its power under the Constitution "to make rules

concerning captures on land and water," and was aimed exclusively at the seizure and confiscation of property used in aid of the rebellion, "not to punish the owner for any crime, but to weaken the insurrection;" but the act of 1862 proceeded upon the entirely different principle of confiscating property, without regard to its use, by way of punishing the owner for being engaged in rebellion and not returning to his allegiance. The act of 1861 did not require (as the act of 1862 did) that proceedings for condemnation of the property in question should be instituted "after the same shall have been seized;" and the act of 1861 expressly authorized (as the act of 1862 did not) such proceedings to be instituted by "the Attorney General or any district attorney of the United States [in the district] in which said property may at the time be." The case at bar presents no question of the construction of the act of 1862.

The Eastport having been captured by the United States forces, and taken into the firm possession of the United States, before the institution of the proceedings for condemnation; those proceedings having been instituted by the district attorney, under the authority expressly given him by the act of 1861, in a proper court of the United States in a district into which she had been taken; and thereupon, according to the usual course of proceedings *in rem* in admiralty, the vessel having been taken into the custody of the marshal under a writ of attachment from the court, and notice published to all persons interested to appear and show cause against her condemnation, and no one having appeared or interposed a claim at the time and place appointed for the hearing; we find it difficult to resist the conclusion that the decree of condemnation thereupon entered was valid, as against her former owners and all other persons, under the act of 1861; that the proceedings cannot be collaterally impeached; and that the sale under that decree passed an absolute title to the United States.

But, apart from the question whether the record shows a complete title in the Eastport to have vested in the United States, the claimant has wholly failed to show that Worth-

ington had any legal right to compensation from the United States for his interest in the vessel.

The counsel for the claimant contends that, the capture having been made on navigable waters by vessels of the United States, the claimant is entitled to compensation for the value of Worthington's interest in the Eastport, under the act of Congress of March 3, 1800, c. 14, § 1, which was as follows:

"When any vessel other than a vessel of war or privateer, or when any goods, which shall hereafter be taken as prize by any vessel acting under authority from the Government of the United States, shall appear to have before belonged to any person or persons resident within or under the protection of the United States, and to have been taken by an enemy of the United States, or under authority, or pretence of authority, from any prince, government or State against which the United States have authorized, or shall authorize, defence or reprisals, such vessel or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying, for and in lieu of salvage, if retaken by a public vessel of the United States, one eighth part, and if retaken by a private vessel of the United States, one sixth part, of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration thereof, shall be adjudged to pay, for and in lieu of salvage, one moiety of the true value of such vessel of war as privateer." 2 Stat. 16.

That act was a regulation of the *jus postliminii*, by which things taken by the enemy were restored to their former owner upon coming again under the power of the nation of which he was a citizen or subject. The *jus postliminii*, derived from the Roman law, and regulated in modern times by statute or treaty, or by the usage of civilized nations, has been

rested by eminent jurists upon the duty of the sovereign to protect his citizens and subjects and their property against warlike or violent acts of the enemy. Vattel's Law of Nations, lib. 3, c. 14, § 204; Halleck's International Law, c. 35, §§ 1, 2. He is under no such obligation to protect them against unwise bargains, or against sales made for inadequate consideration, or by an agent or custodian in excess of his real authority. The *jus postliminii* attaches to property taken by the enemy with the strong hand against the will of its owner or custodian, and not to property obtained by the enemy by negotiation or purchase.

The act of 1800 is entitled "An act providing for salvage in cases of recapture," and applies only to recaptures from an enemy. In order to come within its purpose, and its very words, the property in question must "have been taken by an enemy of the United States," and "retaken" by a public or private vessel of the United States. Where there has been no capture, there can be no recapture. That enactment has been substantially embodied in later statutes. Act of June 30, 1864, c. 174, § 29; 13 Stat. 314; Rev. Stat. § 4652. The similar provision of the English Prize Acts was held by Sir William Scott to be inapplicable to a British ship captured from the French during a war between the two countries which before the war had been seized, condemned and sold under the revenue laws of France, although the French seizure was alleged to have been violent and unjust. *The Jeune Voyageur*, 5 C. Rob. 1. Neither the English statutes nor our own have ever been held to apply to property which had come into the enemy's possession, by purchase or otherwise, with the consent of the owner or of his agent.

In the present case, the only facts found by the Court of Claims (other than may be ascertained from the papers in the Confederate Archives Office) which can be supposed to have any bearing on the question whether the Eastport came into the possession of the Confederate forces by capture, or by purchase, are these: Before and throughout the war of the rebellion, Worthington, being the owner of three fifths of the Eastport, was a citizen and resident of Illinois, was loyal to

the United States, and gave no aid or comfort to the rebellion, and neither knew of, nor consented to, the Eastport being taken by her captain, Wood, within the lines of the Confederate forces. This precludes any inference that Worthington himself participated in, or consented to, a transfer of the Eastport to the Confederate authorities; but it does not negative the supposition that she was sold to those authorities by Wood, or by the owners of the other two fifths of her. That Wood's possession and control of her was by Worthington's authority and consent is evident from the facts that Worthington owned more than one half of her, and that she was being extensively repaired, under the orders of both Wood and Worthington, shortly before Wood took her within the Confederate lines. At that time she was an unarmed vessel, and fit for commercial purposes only.

It is stated in the finding of facts that it did not appear what disposition Wood made of the Eastport, nor whether he was paid purchase money for her, nor whether he ever accounted for such money to the other owners, nor whether they had received any part of it, nor whether she came into the possession of the Confederate forces by capture, or by purchase from Wood.

If the matter rested here, there would be nothing to warrant the court in concluding that the Eastport came into the possession of the Confederate forces by capture or other forcible appropriation. But it does not rest here.

Upon the question whether the so-called Confederate States acquired possession of the Eastport by capture or by purchase, the extracts from the Confederate archives, made part of the facts found by the Court of Claims, appear to this court to have an important bearing, and to be competent, though not conclusive, evidence.

The government of the Confederate States, although in no sense a government *de jure*, and never recognized by the United States as in all respects a government *de facto*, yet was an organized and actual government, maintained by military power, throughout the limits of the States that adhered to it, except in those portions of them protected

from its control by the presence of the armed forces of the United States; and the United States, from motives of humanity and expediency, had conceded to that government some of the rights and obligations of a belligerent. *Prize cases*, 2 Black, 635, 673, 674; *Thorington* v. *Smith*, 8 Wall. 1, 7, 9, 10; *Ford* v. *Surget*, 97 U. S. 594, 604, 605; *The Lilla*, 2 Sprague, 177, and 2 Clifford, 169.

No better evidence of the doings of that organization assuming to act as a government can be found than in papers contemporaneously drawn up by its officers in the performance of their supposed duties to that government.

For the collection and preservation of such papers, a bureau, office or division in the War Department (now known as the Confederate Archives Office) was created by the Executive authority of the United States soon after the close of the war of the rebellion, and has been maintained ever since, and has been recognized by many acts of Congress.

For instance, Congress, beginning in 1872, has made frequent appropriations "to enable the Secretary of War to have the rebel archives examined and copies furnished from time to time for the use of the Government." Acts of May 8, 1872, c. 140, and March 3, 1873, c. 226; 17 Stat. 79, 500; August 15, 1876, c. 287; March 3, 1877, c. 102; 19 Stat. 160, 310; June 19, 1878, c. 329; 20 Stat. 195; June 21, 1879, c. 34; June 15, 1880, c. 225; March 3, 1881, c. 130; 21 Stat. 23, 226, 402. And the appropriations for the War Department in 1882 included one "for travelling expenses in connection with the collection of Confederate records placed by gift or loan at the disposal of the Government." Act of August 5, 1882, c. 389; 22 Stat. 241. Congress has also occasionally made appropriations "to enable the Secretary of the Treasury to have the rebel archives and records of captured property examined, and information furnished therefrom for the use of the Government." Acts of March 3, 1875, c. 130; 18 Stat. 376; March 3, 1879, c. 182; 20 Stat. 384; June 16, 1880, c. 235; 21 Stat. 266. It has once, at least, made an appropriation "for collecting, compiling and arranging the naval records of the war of the rebellion, including Confederate

naval records." Act of July 7, 1884, c. 331; 23 Stat. 185. And it has made appropriations "for the preparation of a general card index of the books, muster rolls, orders and other official papers preserved in the Confederate Archives Office." Acts of May 13, 1892, c. 72, and March 3, 1893, c. 208; 27 Stat. 36, 600.

It would be an anomalous condition of things if records of this kind, collected and preserved by the Government of the United States in a public office at great expense, were wholly inadmissible in a court of justice to show facts of which they afford the most distinct and appropriate evidence, and which, in the nature of things, can hardly be satisfactorily proved in any other manner.

The act of March 3, 1871, c. 116, § 2, provided for the appointment of a board of commissioners, "to receive, examine and consider the justice and validity of such claims as shall be brought before them, of those citizens who remained loyal adherents to the cause and the Government of the United States during the war, for stores or supplies taken or furnished during the rebellion for the use of the Army of the United States in States proclaimed as in insurrection against the United States, including the use and loss of vessels or boats while employed in the military service of the United States." 16 Stat. 524. By the act of April 20, 1871, c. 21, § 1, it was enacted that "all books, records, papers and documents relative to transactions of or with the late so-called government of the Confederate States, or the government of any State lately in insurrection, now in the possession, or which may at any time come into the possession, of the Government of the United States, or of any department thereof, may be resorted to for information by the board of commissioners of claims created by act approved March 3, 1871; and copies thereof, duly certified by the officer having custody of the same, shall be treated with like force and effect as the original." 17 Stat. 6. The latter act thus not only allowed a particular board of commissioners, appointed to pass upon certain claims against the United States for property taken for the use of the Army during the war of the rebellion,

to have access to such archives for information as to transactions of or with the so-called government of the Confederate States; but it declared the records and papers in such archives, or duly certified copies thereof, to be competent evidence of such transactions.

Section 882 of the Revised Statutes, also, reënacting earlier acts of Congress, provides that "copies of any books, records, papers or documents in any of the Executive Departments, authenticated under the seals of such Departments respectively, shall be admitted in evidence equally with the originals thereof." And, by section 1076, the Court of Claims has "power to call upon any of the Departments for any information or papers it may deem necessary;" "but the head of any Department may refuse and omit to comply with any call for information or papers, when, in his opinion, such compliance would be injurious to the public interest."

The certificate of the officer of the United States in charge of the Confederate Archives Office, embodied in the findings of fact, would appear to have been furnished upon a call from the Court of Claims; and it is not open, at this stage of the case, to objection for not being under the seal of the War Department, since that court has found that the papers in that office show the facts stated in that certificate. Those facts consist of official communications, between high civil and military officers of the Confederate States, including a dispatch from one of their generals in Kentucky, October 31, 1861, to the secretary of the navy, that the price of the Eastport was $12,000; a reply of the secretary of war of the same date, giving authority to the general to buy her if thought worth that sum; a letter of January 5, 1862, from the general to the secretary of war, informing him that, by virtue of that authority, he had bought her, and she was being converted into a gunboat; a letter of January 16, 1862, from the secretary of war to the general, saying that he would at once order to be forwarded the necessary funds for the Eastport; and a statement of disbursements, dated February 2, 1863, by the general to the secretary of war, in which one item was a sum of $9688.92, "expended in purchase of Steamer Eastport."

Not going beyond what is required for the purposes of this case, we are of opinion that the originals of these communications, and consequently the certified copies thereof from the Confederate Archives Office, are competent and persuasive evidence that the Confederate authorities did not obtain possession of the Eastport by capture or by other forcible and compulsory appropriation.

The claimant therefore wholly fails to support the allegation of her petition that the Eastport was captured by the insurgents.

Judgment affirmed.